The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GINGREY. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 257, nays 168, not voting 7, as follows:

[Roll No. 383]

YEAS—257

Aderholt
Akin
Alexander
Baca
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Berkley
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chandler
Chocola
Coble
Cole (OK)
Conaway
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Gutknecht
Hall
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Norwood
Nunes
Nussle
Ortiz
Osborne
Otter
Oxley
Pastor
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Salazar
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tanner
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—168

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldwin
Barrow
Bean
Becerra
Berman
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Frank (MA)
Gonzalez
Grijalva
Harman
Hastings (FL)
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Payne
Pelosi
Pomeroy
Price (NC)
Rangel
Rothman
Roybal-Allard
Ruppersberger
Rush
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—7

Evans
Ford
Gutierrez
Harris
McKinney
Northup
Ryan (OH)

□ 1223

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BLUNT. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2389.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PLEDGE PROTECTION ACT OF 2005

The SPEAKER pro tempore. Pursuant to House Resolution 920 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2389.

□ 1225

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2389) to amend title 28, United States Code, with respect to the jurisdiction of Federal courts over certain cases and controversies involving the Pledge of Allegiance, with Mr. LATOURETTE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Missouri (Mr. BLUNT) and the gentleman from New York (Mr. NADLER) each will control 30 minutes.

The Chair recognizes the gentleman from Missouri.

Mr. BLUNT. Mr. Chairman, I yield myself such time as I may consume.

As we approach this bill today, Mr. Chairman, I want to make the point that clearly the Pledge of Allegiance is well understood by this body and the Members of this body. It is repeated here every day. The words of the Pledge are words that we have learned since our childhood:

''I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.''

When Congress passed the bill adding the words ''under God,'' Congress stated its belief that those words in no way run contrary to the first amendment, but recognize ''only the guidance of God in our national affairs.''

Two words, ''under God,'' in the Pledge helped define our national heritage as the beneficiaries of a Constitution sent to the States for ratification ''in the year of our Lord,'' as the ratification statement said, 1787, by a founding generation that saw itself as guided by a providential God. These two words were added to the Pledge in the 1950s, and at that time President Eisenhower made the point that in those days of Cold War, those days after World War II, that it was important that we realize that there was something bigger than ourselves and that our country was guided by that.

For decades children have been reciting the Pledge of Allegiance in classrooms across America. The Pledge of Allegiance is an important civic ritual. It binds us together as Americans. But last year that daily ritual was halted in the Ninth Circuit Court of Appeals. The court actually told teachers and children in Alaska and Arizona, in California and Hawaii, in Idaho and Montana, in Nevada, Oregon, and Washington that they could not recite the Pledge of Allegiance as they had for decades in their classrooms.

The Court's reasoning? The words ''under God'' constituted a violation of the establishment clause of the first amendment. According to the court, it was unconstitutional to lead students, even voluntarily, in the Pledge of Allegiance because it included the phrase ''under God.''

Any of the phrases in the Pledge do not need to be subject to this kind of court interpretation. The Pledge of Allegiance, an act of Congress, modified by the Congress in 1950s, still continues to be the Pledge of Allegiance said by school students and Members of this body and others all over the country today. Judges should not be able to rewrite the Pledge. Passing this bill will protect the Pledge from Federal judges and will strike an important blow for self-government.

This legislation, Mr. Chairman, is in the spirit of the first judiciary act, the Judiciary Act of 1789, drafted by individuals who had drafted the Constitution, voted on by Members who had been at the drafting of the Constitution, all willing to define the role of the Federal courts and to narrow the role of the Federal courts, as this bill proposes to do.

I look forward to the debate.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I really hate to be an ''I told you so,'' but when, in 2003, we considered legislation to strip the Federal courts of jurisdiction, in that case to hear cases challenging the Defense of Marriage Act, I warned that there would be no end to it.

In fact, when we first marked up this bill, I asked my friend, the chairman of the Constitution Subcommittee, whether there would be other court-stripping bills. He assured me that this and the marriage court-stripping bill were the only ones ''so far.'' As we know, he was being, as always, truthful.

Our former colleague Bob Barr, the author of the Defense of Marriage Act, whose legislation Congress was purporting to protect in that case, said, no thanks.

He wrote: ''This bill will needlessly set a dangerous precedent for future Congresses that might want to protect unconstitutional legislation from judicial review. During my time in Congress, I saw many bills introduced that would violate the takings clause, the second amendment, the 10th amendment, and many other constitutional protections. The fundamental protections afforded by the Constitution would be rendered meaningless if others followed the path set by this bill.'' Z! EXT .033 ...HOUSE... K19JY7 PERSONAL COMPUTERJ049060-K19JY7-033-*****-*****-Payroll No.: -Name: -Folios: - -Date: mmddyy -Subformat:

□ 1230

Bob Barr was right. Today it is the turn of the religious minorities.

Once upon a time in this country a student could be expelled from school for refusing to cite the Pledge because it was against his or her religion. In 1943, the Supreme Court in West Virginia Board of Education v. Barnette held that children, in that case Jehovah's Witnesses, had a first amendment right not to be compelled to swear an oath or recite a pledge in violation of their religious beliefs.

This legislation would, of course, strip those families of the right to go to court and to defend their religious liberty. Schools would be able to expel children for acting according to the dictates of their religious faith, and Congress will have slammed the courthouse door in their faces.

As dangerous as this legislation is, even for an election season, it is part of a more general attack on our system of government which includes an independent judiciary whose job it is to interpret the Constitution even if those decisions are unpopular. It is their job to protect individual rights, even if the exercise of those rights in given instances are unpopular.

Sometimes we do not like what the court says. I don't like that the Supreme Court struck down part of the Violence Against Women Act, or that they struck down part of the Gun Free Safe Schools Zones Act, or that they are misapplying, in my opinion, the commerce clause and the 11th amendment in order to gut some of our civil rights laws. I really didn't like it that Republican-appointed justices traversed, perverted justice in order to put someone in the White House who got more than half a million votes less than the other candidate who really won the election.

I don't hear my colleagues on the other side screaming about judicial activism by unelected judges in these cases.

As wrong as I believe the current Supreme Court to be on many issues, I understand that we cannot maintain our system of government and especially our Bill of Rights if the independent judiciary cannot enforce those rights, even if the majority doesn't like it.

Again, I will refer to the Soviet Stalinist Constitution of 1936, which had many rights in it, freedom of speech, freedom of association, freedom of the press, freedom of religious and antireligious propaganda, as they quaintly put it. But, of course, it wasn't worth the paper it was written on because they had no judicial enforcement of it, and if you tried to bring a lawsuit to enforce your right, they shot you before they brought you to court. Any constitutional right without the ability to enforce it in court is no right.

This House appears infected with hostility toward the rule of law. This bill is a perfect example. Even more egregious is the way it has reached the floor. The Judiciary Committee twice voted against reporting this bill to the House. The ''no'' vote was bipartisan. Now the Republican majority is abusing its power to bring it to the floor anyway.

Neither the Parliamentarian nor the Congressional Research Service has been able to find any other case like this. They report, ''We found one instance of a bill, a joint resolution, between the 100th Congress and the current Congress, in which a committee specifically voted not to report a measure that was later considered by the House.'' That measure was a 1996 agriculture bill that was rejected in committee and later folded into a reconciliation bill.

Now the Republican majority exceeds even that arrogance. We are asked to vote on a bill that guts our system of government and guts the protection of our individual rights when the committee tasked with the consideration of this bill rejected it. It must be an election year.

To return to Justice Jackson and the flag salute case, he observed that, and I quote because it is very apposite here, ''The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote. They depend on the outcome of no elections.''

But now some would strip the courts of any ability to protect these individual rights against a temporarily intolerant majority.

As to the complaints about unelected judges, I would refer my colleagues back to their high school civics textbooks. We have an independent judiciary precisely to rule against the wishes of the majority, especially when it comes to the rights of unpopular minorities. That is our system of government and it is a good one and we should protect it.

As Alexander Hamilton said in Federalist Number 78, ''The complete independence of the court of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all reservations of particular rights or privileges would amount to nothing.''

Where would this bill leave religious liberty? The Republicans tell us State courts can protect those rights. What would this mean? It would mean that your rights might be protected in one State, but not in another. I thought the 14th amendment to our Constitution settled that issue.

One of the reasons we have a Supreme Court is so that the Federal

Constitution means the same thing in New York as in California or Mississippi or Minnesota. This country must be one country, not 50 separate countries.

We are really playing with fire here. Do you really hate unpopular religious minorities so much that you are willing to destroy the first amendment? I urge my conservative colleagues especially to shape up and act like conservatives for once. We live in a free society that protects unpopular minorities, even if the majority hates them or hates the expression of their opinion.

If someone doesn't want to recite the Pledge of Allegiance or doesn't feel conscientiously able to recite the words ''under God,'' that is their privilege. Our Constitution protects it, our civil liberties protect it, this country should protect it, and I urge the defeat of this bill.

Mr. Chairman, I reserve the balance of my time.

Mr. BLUNT. Mr. Chairman, I yield 3 minutes to the principal sponsor of the bill, my colleague from Missouri (Mr. AKIN).

Mr. AKIN. Mr. Chairman, I rise to introduce the Pledge Protection Act and just to give a quick and brief history as to why it is important. We have heard some discussion that this is really not necessary, that we can rest assured that the words of the Pledge of Allegiance will just stand firm forever. Unfortunately, that is not what our recent history shows.

First of all, three judges on the Ninth Circuit Court in California ruled that the words ''under God'' are unconstitutional. They were supported by the entire Ninth Circuit.

The case went to the Supreme Court, and I was there at the hearing at the Supreme Court. The President's attorney there argued that the Supreme Court should kick the case out because the person, Mr. Newdow, bringing the case did not have standing. The response of one of the Judges was, as a Supreme Court we never kick a case out based on standing, because we assume the lower courts have already taken care of that.

Why did the Supreme Court do this? They could easily have ruled that the Pledge is just fine, that it is completely constitutional. Is that their ruling? No. They kicked the case out based on standing.

So we believe that there are not five Judges on the Court, which is what it would take to uphold the Pledge of Allegiance. Hence we use a constitutional authority granted to us from the Founders that wrote the Constitution to protect the Pledge of Allegiance. That constitutional authority is known as Article III, section 2.

What we do is we create a very simple fence around the Federal court system. We say just regarding the Pledge of Allegiance, that no Federal Court has authority to hear a claim that the Pledge is unconstitutional. So we put a fence around the Federal court system.

Well, what does that mean, if somebody really wants to make a claim that the Pledge is unconstitutional? It means that they go to their local State courts, with the ultimate decisions being made in 50 separate supreme courts and a court here in the District of Columbia. So that is the reason for why we need to pass the Pledge Protection Act.

It seems a bit ironic that some people will complain about the fact that we have no respect for the Constitution and that we are eroding the separation of powers, and yet it is the very Constitution that gives Congress the authority and the responsibility to stand up to the Court when they are misusing the Constitution. If you claim you respect the Constitution, part of that is the first amendment, and the first amendment to the Constitution is about free speech. It is not about censorship.

To say that a child cannot say the Pledge of Allegiance is a form of censorship. The Court has already ruled that no child has to say the Pledge. But now the Court wants to go the other step and say no, we are going to use the first amendment about free speech to say that you cannot say the Pledge. We must step in.

Mr. NADLER. Mr. Chairman, I yield 7 minutes to the distinguished gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Chairman, anytime we consider legislation like this, one can be assured that veterans benefits have either just been cut or are about to be cut. Instead of addressing the real issues of patriotism, such as the adequacy of health care funding for veterans or the fact that the number of veterans waiting for benefit determinations has increased by approximately 80,000 since last year alone, we are going to use this bill to divert attention from those more pressing issues.

Mr. Chairman, this bill is aimed at the Ninth Circuit Court of Appeals case, Newdow v. U.S. Congress, which held that the words ''under God'' in the Pledge are unconstitutional in the context of public school recitations. I happen to disagree with that decision and I agree with the dissent in that case which stated, ''Legal world abstractions and ruminations aside, when all is said and done, the danger that 'under God' in our Pledge of Allegiance will tend to bring about a theocracy or suppress someone's belief is so miniscule as to be de minimis. The danger that the phrase represents to our first amendment's freedoms is picayune at best.''

I agree with that language, Mr. Chairman. So as we discuss the constitutionality of ''under God'' in the Pledge, we must recognize that every bill that is introduced, every hearing we have, every vote that we take on the issue enhances the importance of this issue and these actions serve to chip away at the de minimis argument and actually increase the chance that the court will ultimately decide that the Pledge is unconstitutional.

The simple fact is that we need to respect the Constitution and the right of courts to decide whether the Pledge is constitutional or not. But the majority will not do that. H.R. 2389 is a court-stripping bill as the bill does not address the substance of the arguments pro and con, it just prohibits Federal courts, including the Supreme Court, from deciding the case.

This bill is a blatant attempt to prevent the judicial branch from doing its job. The foundation of our democracy rests on the principle of checks and balances of power among three coequal branches, and this bill is a flagrant disregard of that principle. In addition, this bill will result in unprecedented confusion as each State court will decide how to interpret the Federal Constitution.

It also sets a poor precedent that at any time we are considering a bill that might be found unconstitutional by the courts, we might just prohibit the courts from saying so by taking away their right to hear the case.

Mr. Chairman, this bill would strip Federal courts from their ability to hear cases that are clearly within Federal jurisdiction because those cases address Federal constitutional rights and individual liberties guaranteed under the Bill of Rights, and many rights may be involved because the bill is not limited to cases addressing the words ''under God.'' The recitation of the Pledge may in some situations implicate the right of free speech, the right of freedom of association, the right to free exercise of religion, the establishment clause protections, all guaranteed under the first amendment of the Constitution.

The passage of this bill will mean that there will be no Federal law on a Federal constitutional question, not even a supreme law of the land to guide other Federal or State courts on the matter or to definitively state the law when there are inconsistent decisions in different States. So a Federal constitutional right could be applied inconsistently to American citizens simply because they live in different parts of the country.

The need for a Federal review of many different rights that may be involved is not speculative. For example, Mr. Chairman, even before the words ''under God'' were in the Pledge, the Supreme Court in 1943 held in West Virginia Board of Education v. Barnette that a compulsory flag salute and accompanying Pledge were unconstitutional when required of a public school student in violation of the student's religious beliefs.

In that case, the lawsuit was originally filed in Federal Court and was never considered in State court. If this legislation passes, State courts won't even have to follow prior Supreme Court precedents. The reason that State courts are prohibited from ignoring Supreme Court precedent is if they

do so, the Supreme Court is there, ready and willing and able to reverse the State court's decision. But no more under this bill. We may well end up with 50 interpretations and applications of a single Federal constitutional right.

For over 200 years, since Marbury v. Madison in 1803, the Supreme Court has been the final arbiter of what is constitutional and what is not. So while Congress has the power to regulate jurisdiction of Federal courts, the court-stripping language of H.R. 2389 grossly exceeds that power in violation of the principles of separation of powers.

□ 1245

If this court-stripping idea had been around in 1954, Congress could have prohibited the Supreme Court from hearing issues involving student assignment to public schools. We never would have had the decision of Brown v. Board of Education, or it could have passed in the 1960s, and the decision in the Federal court in Loving v. Virginia, to overrule the will of the people of Virginia and require Virginia to recognize racially mixed marriages, might not have ever happened.

The judges in those decisions were described just as judges are described today: liberal, rogue, unelected, lifetime appointed activist judges. But they made the right decisions in those cases. The truth is that we rely on Federal courts to determine and enforce our constitutional rights.

America is more politically and religiously diverse than it was in 1943, but instead of embracing that diversity, this bill would jeopardize our fundamental rights. We should instead adhere to the wisdom of the Supreme Court in the Barnette case which said, and I quote, ''The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy and place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.''

Mr. Chairman, there are numerous legal, civil rights and religious organizations opposed to this legislation, including the American Bar Association, the ACLU, the American Jewish Committee, the Anti-Defamation League, the Baptist Joint Committee, the Constitutional Project, the Leadership Conference on Civil Rights, Legal Momentum, the National Women's Law Center and People for the American Way.

Mr. Chairman, I will ask unanimous consent to insert those letters into the RECORD at the appropriate time, and there are other organizations, of course, that are opposed to the bill. I urge my colleagues to vote ''no'' on this legislation.

JUNE 14, 2006.

Protect Separation of Powers and Religious Minorities' Longstanding Constitutional Rights; Oppose Final Passage of H.R. 2389.

DEAR REPRESENTATIVE: We, the undersigned religious, civil rights, and civil liberties organizations, urge you to oppose H.R. 2389, the ''Pledge Protection Act,'' misguided legislation that would strip all federal courts, including the Supreme Court, from hearing First Amendment challenges to the Pledge of Allegiance and from enforcing longstanding constitutional rights in federal court.

The signatories to this letter include organizations that supported the court challenge to the constitutionality of including ''under God'' in the Pledge of Allegiance, organizations that opposed that challenge, and organizations that took no position on the matter. We are united, however, in believing that H.R. 2389 threatens the separation of powers that is a fundamental aspect of our constitutional structure. Beyond this, while the legislation ostensibly responds to the controversy surrounding ''under God'' in the Pledge of Allegiance, this legislation sweeps far more broadly, with potentially severe constitutional implications for religious minorities who are adversely affected by government-mandated recitation of the Pledge.

First and foremost, we are opposed to H.R. 2389 because this legislation, by entirely stripping all federal courts, including the Supreme Court, of jurisdiction over a particular class of cases, threatens the separation of powers established by the Constitution, and undermines the unique function of the federal courts to interpret constitutional law. This legislation deprives the federal courts of the ability to hear cases involving religious and free speech rights of students, parents, and other individuals. The denial of a federal forum to plaintiffs to vindicate their constitutional rights would force plaintiffs out of federal courts, which are specifically suited for the vindication of federal interests, and into state courts, which may be hostile or unsympathetic to these federal claims, and which may lack expertise and independent safeguards provided to federal judges under Article III of the Constitution.

In addition, as drafted, the bill would deny access to the federal courts in cases to enforce existing constitutional rights for religious minorities. Over sixty years ago, the Supreme Court decided the case of West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). In Barnette, the Supreme Court struck down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance. Under the West Virginia law, religious minorities faced expulsion from school and could be subject to prosecution and fined, if convicted of violating the statute's provisions. In striking down that statute, the Court reasoned: ''To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'' 319 U.S. at 639–40.

Moreover, a panel of the U.S. Court of Appeals for the Third Circuit, holding unconstitutional two provisions of a Pennsylvania law mandating recitation of the Pledge, said, ''It may be useful to note our belief that most citizens of the United States willingly recite the Pledge of Allegiance and proudly sing the national anthem. But the rights embodied in the Constitution, most particularly the First Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection.'' Circle School v. Pappert, 381 F.3d 172, 183 (3d Cir. 2004).

H.R. 2389 would undermine the longstanding constitutional rights of religious minorities to seek redress in the federal courts in cases involving mandatory recitation of the Pledge. As a result, this legislation will seriously harm religious minorities and the constitutional free speech rights of countless individuals.

H.R. 2389 also raises serious legal concerns about the violation of the principles of separation of powers, equal protection and due process. The bill undermines public confidence in the federal courts by expressing outright hostility toward them, threatens the legitimacy of future congressional action by removing the federal courts as a neutral arbiter, and rejects the unifying function of the federal judiciary by denying federal courts the opportunity to interpret the law. We strongly believe that this legislation as drafted will have broad, negative implications on the ability of individuals to seek enforcement of previously constitutionally protected rights concerning mandatory recitation of the Pledge. We therefore urge, in the strongest terms, your rejection of this misguided and unwise legislation.

Sincerely,

American Civil Liberties Union.
American Humanists Association.
American Jewish Committee.
Americans for Democratic Action.
Americans United for Separation of Church and State.
Anti-Defamation League.
Baptist Joint Committee.
Buddhist Peace Fellowship.
Central Conference of American Rabbis.
Disciples Justice Action Network (Disciples of Christ).
Equal Partners in Faith.
Federation of Jain Associations in North America (JAINA).
Friends Committee on National Legislation.
Human Rights Campaign.
Jewish Council For Public Affairs (JCPA).
Leadership Conference on Civil Rights.
Legal Momentum (formerly NOW Legal Defense and Education Fund).
National Council of Jewish Women.
National Council of Negro Women, Inc.
National Family Planning and Reproductive Health Association (NFPRHA).
National Gay and Lesbian Task Force.
People For the American Way.
Secular Coalition for America.
Sikh Coalition.
The Interfaith Alliance.
The Workmen's Circle/ Arbeter Ring.
Union for Reform Judaism.
Unitarian Universalist Association of Congregations.
Woodhull Freedom Federation.

JUNE 9, 2006.

Oppose the ''Pledge Protection Act,'' H.R. 2389.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: We, the undersigned organizations dedicated to protecting women's reproductive health and rights, write to urge you to oppose H.R. 2389, the so-called ''Pledge Protection Act.'' The implications of this bill go far beyond the context of the Pledge of Allegiance. This bill would set a dangerous precedent that would disrupt the traditional separation of powers and undermine the longstanding role of the federal

judiciary in safeguarding constitutional rights, including the right of reproductive choice.

H.R. 2389 would deny all federal courts—including the U.S. Supreme Court—the jurisdiction to hear any cases concerning the interpretation or constitutionality of the Pledge of Allegiance. The bill would irreparably alter the relationship between the judicial branch and the two other branches of the federal government by depriving the federal courts of their traditional role as interpreters of the U.S. Constitution. Even more disturbing, unlike other previous versions of court-stripping legislation, H.R. 2389 deprives even the U.S. Supreme Court of jurisdiction, divesting the Court of its historical role as the final authority on the U.S. Constitution.

We are deeply concerned about legislation like H.R. 2389 that strips federal courts of their important role in safeguarding constitutional rights and freedoms. While the target today is a controversial view of the Pledge of Allegiance and the separation of church and state (a view that the Supreme Court has not endorsed), there can be no doubt that anti-choice lawmakers and their allies in Congress intend to use this strategy to achieve other policy goals that they are unable to accomplish without toppling the delicate constitutional balance of powers that has served this country for more than 200 years. In the past, Republican leadership has discussed ''jurisdiction stripping'' measures to achieve other social policy goals. While they have claimed that the time is ''not quite ripe'' to apply this legislative tactic to the issue of abortion, in fact, anti-choice lawmakers have already made the attempt—in 2002, when considering the Federal Abortion Ban. Although that particular effort failed, passage of H.R. 2389 would set a dangerous precedent for future attempts to strip federal courts of jurisdiction to hear cases regarding reproductive choice. The federal courthouse doors should not be closed to women seeking to vindicate their right to obtain critical reproductive health services.

For these reasons, we urge you to oppose H.R. 2389.

Sincerely,

Center for Reproductive Rights.
Choice USA.
Feminist Majority.
Legal Momentum.
NARAL Pro-Choice America.
National Abortion Federation.
National Council of Jewish Women.
National Family Planning and Reproductive Health Association.
National Organization for Women.
National Partnership for Women & Families.
National Women's Law Center.
Planned Parenthood Federation of America.
Sexuality Information and Education Council of the U.S. (SIECUS).

LEADERSHIP CONFERENCE
ON CIVIL RIGHTS,
Washington, DC, June 7, 2006.

Re Oppose the ''Pledge Protection Act of 2005'' (H.R. 2389): It Threatens Constitutional Protections and Civil Rights.

DEAR JUDICIARY COMMITTEE MEMBER: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil rights coalition, we urge you to vote against H.R. 2389, the ''Pledge Protection Act of 2005.'' LCCR strongly opposes any proposal that would eliminate access to the federal judiciary for any group of Americans. H.R. 2389 would do just that: it would deny constitutional rights to religious minorities by stripping the courts of jurisdiction to hear some cases.

For decades, the judicial branch has often been the sole protector of the rights of minority groups against the will of the popular majority. Any proposal to interfere with this role through ''courtstripping'' proposals would set a dangerous precedent that would harm all Americans. Allowing the courthouse doors to be closed to any minority group, as H.R. 2389 would do to religious minorities, is not only unnecessary in itself, but will also set a dangerous precedent that will undermine the rights of other minority groups that may need to turn to the courts for justice.

Further, H.R. 2389 threatens the separation of powers established by the Constitution, and undermines the unique function of the federal courts to interpret constitutional law. It deprives federal courts of the ability to hear cases involving religious and free speech rights of students, parents, and other individuals. The denial of a federal forum to plaintiffs to vindicate their constitutional rights would force them out of federal courts, which are specifically suited to hear such cases, and into state courts, which may be hostile or unsympathetic to these federal claims and which may lack the expertise and independent safeguards that distinguish Article III courts.

In West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943), the Supreme Court recognized the importance of protecting the religious beliefs of all Americans, by striking down a West Virginia law that required schoolchildren to recite the Pledge of Allegiance. The Court reasoned: ''To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds.'' H.R. 2389 would slam the federal courthouse doors to all religious minorities trying to do nothing more than vindicate a fundamental, existing constitutional right that they have had for over 60 years.

LCCR urges you to vote against H.R. 2389 because of the dangers it poses to constitutional protections and to the enforcement of civil rights laws. If you have any questions, please feel free to contact Rob Randhava, LCCR Counsel or Nancy Zirkin, LCCR Deputy Director. Thank you for your consideration.

Sincerely,

WADE HENDERSON,
Executive Director.
NANCY ZIRKIN,
Deputy Director.

BAPTIST JOINT COMMITTEE
FOR RELIGIOUS LIBERTY,
Washington, DC, June 6, 2006.

DEAR REPRESENTATIVE: The Baptist Joint Committee (BJC) urges members of the Judiciary Committee to vote no on H.R. 2389, the so-called ''Pledge Protection Act,'' when considered during markup tomorrow. The BJC is a 70–year-old organization committed to the principle that religion must be freely exercised, neither advanced nor inhibited by government. We oppose any legislation that seeks to strip the federal courts of their fundamental role in protecting individual liberties.

The existence of an independent judiciary, free from political or public pressure, has been essential to our Nation's success in protecting religious liberty for all Americans. Indeed, the role of the federal courts has long been recognized as essential in the battle for full religious liberty. As Justice Jackson stated in the case of West Virginia State Board of Education v. *Barnett*: ''The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.'' 319 U.S. 624, 639 (1943).

Moreover, the result of any particular case does not undermine the important role of the judiciary. The misnamed ''Pledge Protection Act'' represents a dangerous attack on our tradition of religious freedom, on the constitutional separation of powers and indeed our system of government. It represents an unwarranted attempt to restrict the power of the federal judicial system.

Whatever the motivation, there is insufficient basis to depart from a long-standing congressional custom against using jurisdiction-stripping to control the federal courts. Federal judicial review has consistently supported the proper separation of church and state so vital to all Americans, and we must trust that the courts will continue to do so. We ask the Judiciary Committee to reject H.R. 2389.

Sincerely,

J. BRENT WALKER,
Executive Director.
K. HOLLYN HOLLMAN,
General Counsel.

UNITARIAN UNIVERSALIST
ASSOCIATION OF CONGREGATIONS,
Washington, DC, June 6, 2006.

DEAR REPRESENTATIVE: On behalf of more than 1,050 congregations that make up the Unitarian Universalist Association, I urge you to oppose H.R. 2389, the ''Pledge Protection Act''. As a tradition with a deep commitment to religious pluralism, we believe that this legislation would seriously undermine the First Amendment protections of the Constitution, and particularly the rights of religious minorities, by stripping federal courts, including the Supreme Court, of jurisdiction over cases concerning the Pledge of Allegiance.

In resolutions dating back to 1961, the highest policy-making body of the Unitarian Universalist Association has repeatedly affirmed the right of all Americans to religious freedom, including the right of religious minorities in public schools to not recite the Pledge of Allegiance. The Supreme Court has agreed in the case of West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) that the Pledge cannot be mandatory for public school students.

Despite the Barnette ruling, we know from experience that the practice of mandatory recitation continues. By eliminating the mechanism for religious minorities to seek relief from this practice through appeals to a federal court, H.R. 2389 would have the practical effect of all but eliminating the right itself. As a result, we believe that this legislation will seriously harm religious minorities and the constitutional free speech rights of countless parents and children, many of whom are members of Unitarian Universalist congregations and are involved in our religious education programs.

By undermining the power of federal courts to protect constitutional rights affirmed by the U.S. Supreme Court, we believe that H.R. 2389 would weaken the separation of powers in a way that we find deeply troubling.

The congregations of the Unitarian Universalist Association collectively affirm and promote the right of conscience and the use of the democratic process in society at large. We are committed to the ideals of the founders of this nation, including religious liberty and religious pluralism, as well as the balance of powers that protects such rights.

I urge you to preserve the rights of religious minorities, as well as the constitutional separation of powers, by opposing the ''Pledge Protection Act.''

In Faith,

ROBERT C. KEITHAN,
Director.

RELIGIOUS ACTION CENTER
OF REFORM JUDAISM,
Washington, DC, June 6, 2006.

DEAR REPRESENTATIVE: On behalf of the Union for Reform Judaism, whose more than 900 congregations across North America encompass 1.5 million Reform Jews, and the Central Conference of American Rabbis (CCAR), whose membership includes more than 1,800 Reform rabbis, I ask you to oppose H.R. 2389, the Pledge Protection Act, when it is marked up by the House Judiciary Committee tomorrow.

As you know, the bill would strip federal courts, including the Supreme Court, of their authority to hear First Amendment cases pertaining to the Pledge of Allegiance. By supporting this legislation, you risk compromising the traditional—and vital—system of checks and balances upon which our government was founded. In addition, the bill threatens the ability of members of religious minorities to seek the protection of the federal courts in cases where they feel coerced into reciting the Pledge.

What this legislation places at stake is nothing less than the principle of the separation of powers that has allowed our nation to flourish for more than two centuries. Americans of all religious backgrounds, and of none, hold differing views about the inclusion of the phrase ''under God'' in the Pledge of Allegiance. The Movement I have the honor of representing, for example, took no position when the Supreme Court heard a case concerning the Pledge two years ago. Yet H.R. 2389 is not about that contentious issue. By removing cases involving the Pledge from the jurisdiction of the federal courts, Congress would undermine the ability of those courts to interpret constitutional law, the very core of the courts' functions. Plaintiffs seeking to have their federal rights upheld should not be forced to defend those rights in state courts.

In addition, H.R. 2389 threatens the rights of members of religious minorities, such as Mennonites, Buddhists, and others who in the past have been adversely affected by being forced to recite the Pledge in violation of Supreme Court rulings. Were H.R. 2389 to become law, elementary school students who are punished for declining to participate in the recitation of the Pledge based on their religious teachings would not be able to have their rights upheld in federal court. Under H.R. 2389 as currently drafted, even the Supreme Court would not be allowed to hear the case and uphold the child's rights. As a people who have long known the dangers inherent in limiting the protections afforded religious minorities, we are particularly sensitive to this effort to restrict courts from protecting such minorities.

The dangers of Congressional tampering with the jurisdiction of the federal courts and restricting their ability to uphold the rights of religious minorities could not be graver. The very values upon which our nation was founded—separation of powers and religious liberty—are threatened by H.R. 2389. I strongly urge you to oppose this perilous legislation.

Sincerely,

MARK J. PELAVIN,
Associate Director.

NATIONAL COUNCIL OF JEWISH WOMEN,
New York, NY, June 6, 2006.

Hon. JAMES SENSENBRENNER,
Chairman, House Judiciary Committee,
Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: I am writing on behalf of the 90,000 members and supporters of the National Council of Jewish Women (NCJW) in opposition to the ''Pledge Protection Act of 2005'' (H.R. 2389) which would strip all federal courts, including the Supreme Court, from hearing First Amendment challenges to the Pledge of Allegiance and from enforcing longstanding constitutional rights in federal court.

NCJW is a volunteer organization, inspired by Jewish values, that works to improve the quality of life for women, children, and families and to ensure individual rights and freedoms for all. As such we must oppose the passage of any legislation that threatens religious liberty and an individual's access to the judicial process.

This bill threatens the separation of powers that is a founding principle of our nation and a key source of our liberties. In addition, it would impose religious and ideological conformity regardless of individual conscience, by preventing dissenting voices from appealing to the courts.

This attempt to restrict access to the courts is part of a larger campaign to roll back political and religious freedom by crippling the ability of the judicial branch of government to defend civil and individual rights. If this bill moves forward, it would undermine constitutional rights and the judiciary.

As Jews, we know that the power of the majority can become the tyranny of the majority if left unchecked. H.R. 2389 would undermine the longstanding constitutional rights of religious minorities to seek redress in the federal courts in cases involving mandatory recitation of the Pledge.

Sincerely,

PHYLLIS SNYDER,
President.

THE AMERICAN JEWISH COMMITTEE,
Washington, DC, June 7, 2006.

Re Pledge Protection Act of 2005 (H.R. 2389).

DEAR REPRESENTATIVE: On behalf of the American Jewish Committee, the nation's oldest human relations organization with over 150,000 members and supporters represented by 33 regional offices nationwide, I urge you to oppose the Pledge Protection Act of 2005 (H.R. 2389).

While AJC has not taken a position on the constitutionality of including ''under God'' in the Pledge of Allegiance, we believe that the federal courts must be available to hear cases in which individuals contend that their First Amendment rights have been violated. H.R. 2389 would strip all federal courts, including the Supreme Court, of the jurisdiction to hear First Amendment challenges to the Pledge. This legislation threatens the separation of powers that is a fundamental aspect of our constitutional structure and has potentially severe constitutional implications for religious minorities and others who are adversely affected when the government impermissibly seeks to mandate the recitation of the Pledge.

Furthermore, this legislation would undermine public confidence in the federal courts, threaten the legitimacy of future congressional action by removing the federal courts as a neutral arbiter, and reject the unifying function of the federal judiciary by denying federal courts the opportunity to interpret the law.

Finally, as drafted, the bill would deny access to the federal courts—even the Supreme Court—when individuals seek redress in cases involving mandatory recitation of the Pledge. As a result, this legislation will seriously undermine constitutional guarantees of freedom of speech and religion. Coercing students to say the Pledge of Allegiance is contradictory to the very principles of conscience which both our Constitution and the Pledge of Allegiance itself represent. Students' First Amendment rights were protected in the U.S. Supreme Court's landmark decision in West Virginia State Board of Education v. Barnett, 319 U.S. 624 (1943) (striking down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance), and, more recently, in the decision of a federal appellate court in Circle School v. Pappert, 381 F.3d 172 (3d Cir. 2004) (holding that a Pennsylvania law mandating the recitation of the Pledge, even when it provided a religious exception, violated the Constitution because it violated the free speech of the students). H.R. 2389 contradicts these significant decisions by removing from the federal courts the jurisdiction to hear these types of cases.

For all of these reasons, the American Jewish Committee urges you to vote against this misguided and unwise legislation. Thank you for your consideration of our views on this important matter.

Respectfully,

RICHARD T. FOLTIN,
Legislative Director and Counsel.

THE INTERFAITH ALLIANCE,
Washington, DC, June 9, 2006.

DEAR REPRESENTATIVE: As the president of the Interfaith Alliance, I am writing to urge you vote ''No'' on passage of the ''Pledge Protection Act'' (H.R. 2389). The Interfaith Alliance is a nonpartisan, clergy-led organization that represents over 150,000 members. We are committed to promoting the positive and healing role of religion in public life and challenging those who employ religion to promote intolerance.

If passed, H.R. 2389 would strip all federal courts, including the U.S. Supreme Court, from hearing any cases that have to deal with the Pledge of Allegiance. The Interfaith Alliance has not taken a position either for or against the inclusion of the phrase ''under God'' in the Pledge of Allegiance. We will advocate, however, for the right of any person of faith or of no faith at all to receive a fair hearing by the federal courts if they feel their Constitutional rights have been violated by this or any other imposition of sectarian religious references in public places. No citizen's rights or opportunities should depend on religious beliefs or practices.

This bill is not only an assault on the freedom of conscience guaranteed by our Constitution; it also undermines the federal courts' role of providing access to justice to those who are in the religious minority and those in religious majorities who believe that religious choices should be couched in freedom and never imposed by law. If passed, H.R. 2389 would slam the courthouse door and reduce the phrase ''Equal Justice under Law'' to just a hollow phrase above a courthouse that is off-limits to those who fall outside of the Judeo-Christian tradition.

It is time for congress to stop trying to curtail the power of the federal judiciary, a fundamental component of our nation's system of checks and balances. The efforts to prevent the courts from hearing cases on gay marriage and the Pledge of Allegiance, among others, appear to be nothing more than an attempt to pander to a political base.

Americans of all faiths—Buddhists, Hindus, Sikhs, Muslims, Christians and Jews—and those who profess no faith—must have the right to practice their religions and raise challenges when they feel that there is a specific violation of the clause in the First

Amendment which guarantees that ''Congress shall make no law respecting an establishment of religion.'' How strange the times when the democratic process founded to protect the rights of minorities is being used to jeopardize or abolish the rights of minorities in the name of religion.

Although this legislation most directly affects those who do not adhere to the mainline religious traditions in our nation, in truth it diminishes any of us who see religious liberty as a non-negotiable part of our American democracy. H.R. 2389 is bad for the Constitution. It is bad for religion.

If there is anything that we at The Interfaith Alliance can do to assist you in this important matter, please do not hesitate to contact Preetmohan Singh, Senior Policy Analyst.

Sincerely,

Rev. Dr. C. WELTON GADDY,
President, The Interfaith Alliance, Pastor of Preaching and Worship, North Minister Baptist Church (Monroe, LA).

THE CONSTITUTION PROJECT,
Washington, DC, September 21, 2004.

HOUSE OF REPRESENTATIVES,
The Capitol,
Washington, DC.

DEAR MEMBERS OF THE HOUSE OF REPRESENTATIVES: I write on behalf of the Constitution Project to urge you to oppose H.R. 2028, the ''Pledge Protection Act of 2003.''

The Constitution Project, based at Georgetown University's Public Policy Institute, specializes in creating bipartisan consensus on a variety of legal and governance issues, and promoting that consensus to policymakers, opinion leaders, the media, and the public. We have initiatives on the death penalty, liberty and national security, war powers, and judicial independence (our Courts Initiative), among others. Each of our initiatives is directed by a bipartisan committee of prominent and influential businesspeople, scholars, and former public officials.

Our Courts Initiative works to promote public education on the importance of our courts as protectors of Americans' essential constitutional freedoms. Its co-chairs are the Honorable Mickey Edwards, John Quincy Adams Lecturer at the John F. Kennedy School of Government at Harvard University and former chair of the House of Representatives Republican Policy Committee (R–OK), and the Honorable Lloyd Cutler, a prominent Washington lawyer and White House counsel to Presidents Carter and Clinton.

In 2000, the Courts Initiative created a bipartisan Task Force to examine and identify basic principles as to when the legislature acts unconstitutionally in setting the powers and jurisdiction of the judiciary. The Task Force was unanimous in its conclusion that some legislative acts restricting courts' powers and jurisdiction are unconstitutional. The Task Force also concluded that some legislative actions, even if constitutional, are undesirable. (The Task Force's findings and recommendations are published in Uncertain Justice: Politics and America's Courts 2000.)

Our Task Force arrived at seven bipartisan consensus recommendations, including the following, which are relevant to the legislation at hand:

1. Congress and state legislatures should heed constitutional limits when considering proposals to restrict the powers and jurisdiction of the courts.

2. Legislatures should refrain from restricting court jurisdiction in an effort to control substantive judicial decisions in a manner that violates separation of powers, due process, or other constitutional principles.

3. Legislatures should not attempt to control substantive judicial decisions by enacting legislation that restricts court jurisdiction over particular types of cases.

4. Legislatures should refrain from restricting access to the courts and should take necessary affirmative steps to ensure adequate access to the courts for all Americans.

Specifically, our Task Force was unanimous in its view that there are some constitutional limits on the authority the legislature to restrict court jurisdiction in an effort to control substantive judicial decisions. In particular, separation of powers, due process, and other constitutional provisions limit such authority. Task Force members had differing views about the scope and source of the constitutional limit on the legislature's power in this area. For instance, some believed that restrictions on jurisdiction become unconstitutional when they undermine the essential role of the Supreme Court. Others relied on a reading of the Vesting Clause of Article III, which places judicial power—the power to decide cases—in the hands of the courts alone. Nonetheless, all believed that constitutional limitations exist.

Apart from the constitutionality of laws restricting federal court jurisdiction, the Task Force was also unanimous in its view that legislative acts stripping courts of jurisdiction to hear particular types of cases in an effort to control substantive judicial decisions are undesirable and inappropriate in a democratic system with co-equal branches of government. Legislative restriction of jurisdiction in response to particular substantive decisions unduly politicizes the judicial process, and attempts by legislatures to affect substantive outcomes by curtailing judicial jurisdiction are inappropriate, even if believed constitutional. (Indeed, it was striking that members reflecting a broad ideological range—from, for example, Leonard Leo of the Federalist Society to Steven Shapiro of the American Civil Liberties Union—agreed that restrictions on jurisdiction to achieve substantive changes in the law are unwise and undesirable policy.)

The Task Force was also unanimous that legislation that restricts access to the courts and precludes individuals from using a judicial forum to enforce rights is undesirable and unconstitutional. Rights are meaningless without a forum in which they can be vindicated. Therefore, access to the courts at both the federal and state levels is essential in order for rights to have effect. Legislatures have the duty to ensure meaningful access to the courts and legislative actions that preclude this are undesirable and unconstitutional.

Our Task Force reached these conclusions and recommendations rightly. From its beginning, our system of constitutional democracy has depended on the independence of the judiciary. Judges are able to protect citizens' basic rights and decide cases fairly only if free to make decisions according to the law, without regard to political or public pressure. Similarly, the judiciary can maintain the checks and balances essential to preserving a healthy separation of powers only if able to resist overreaching by the political branches. Indeed, the cornerstone of American liberty is the power of the courts to protect individual rights from momentary excesses of political and popular majorities.

In recent years, as part of the polarization and posturing that increasingly characterize our national and state politics, threats to judicial independence have become more commonplace. Attacks on judges for unpopular decisions, even those made in good faith, have become more rampant. Politicians are responding to unpopular decisions and litigants by attempting to restrict courts' powers in certain kinds of cases. However, Americans have much to lose if we do not exercise self-restraint and instead choose short-term political gain at the expense of judicial independence. The independence of our judiciary is, as Chief Justice Rehnquist described, ''one of the crown jewels of our system of government.''

In conclusion, while Article III of our Constitution gives Congress the power to regulate federal court jurisdiction, this power is not unlimited, and Congress should not—and in some instances may not —use its power to restrict federal court jurisdiction in ways that infringe upon separation of powers, violate individual rights and equal protection, or offend federalism. H.R. 2028 is poised to do all three by stripping federal courts—including even the U.S. Supreme Court—of the authority to hear cases involving the Pledge of Allegiance, even when such cases involve First Amendment issues of free speech and freedom of religion. It sets the dangerous precedent of transferring questions of federal and constitutional law exclusively to state courts and preventing American citizens from seeking protection of fundamental rights in federal court, and it threatens the critical and unique role that the federal courts play in constitutional balance of powers, interpreting and enforcing constitutional law, and providing legal certainty.

For these reasons, as well as those detailed our Task Force's findings and recommendations, the Constitution Project urges you to oppose H.R. 2028. Thank you for your consideration.

Sincerely,

KATHRYN A. MONROE,
Director, Courts Initiative.

AMERICAN BAR ASSOCIATION,
Washington, DC, July 18, 2006.

Re H.R. 2389, the Pledge Protection Act of 2005.

DEAR REPRESENTATIVE: We understand that the House is scheduled to consider H.R. 2389 tomorrow. We are writing to express our opposition to this legislation, which would strip from all federal courts jurisdiction to hear constitutional challenges to the interpretation of, or the validity of, the Pledge of Allegiance.

Our views on H.R. 2389 are informed by our long-standing opposition to legislative curtailment of the jurisdiction of the Supreme Court of the United States and the inferior federal courts for the purpose of effecting changes in constitutional law. The ABA has taken no position on the underlying issues regarding recitation of the Pledge of Allegiance in public schools; instead, our strong opposition to H.R. 2389 and other pending legislation that would strip the federal courts of jurisdiction to hear selected types of constitutional cases is based on our concern for the integrity of our system of government.

This legislation would authorize Congress to use its regulatory power over federal jurisdiction to advance a particular legislative outcome by insulating it from constitutional scrutiny by the federal judiciary. In addition to being constitutionally suspect, this legislation would establish a dangerous precedent if enacted. As a matter of policy, Congress should not jettison our foundational principles because of current dissatisfaction with a controversial decision of the Supreme Court or lower federal courts by permanently stripping the jurisdiction of the federal courts to hear certain categories of cases. Rather than strengthening its legislative role, Congress, by pressing its own

checking power to the extreme, imperils the entire system of separated powers.

If enacted, H.R. 2389 would restrict the role of the federal courts in our system of checks and balances and thereby limit the ability of the federal courts to protect the constitutional rights of all Americans. Indeed, this legislation would leave the state courts as the final arbiters of federal constitutional law, creating the possibility that some state judges might choose not to follow Supreme Court precedents. Because the legislation would nullify the Supremacy Clause in certain classes of cases, the Constitution could mean something different from state to state; and, contrary to the expressed intentions of the Framers, our fundamental rights and the balance of power among the branches would be subject to evanescent majority opinion.

At a time when Congress is accusing the federal courts of overstepping their constitutional role and calling for judicial restraint, we urge you to likewise exercise legislative restraint and demonstrate your continued commitment to the doctrine of separation of powers and a government composed of separate but coequal branches by voting to defeat passage of H.R. 2389.

If you have any questions regarding our position, please have your staff contact Denise Cardman, Deputy Director of the Governmental Affairs Office.

Sincerely,

ROBERT D. EVANS

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, June 6, 2006.

Re Don't Shut the Federal Courthouse Doors to Religious Minorities; Oppose H.R. 2389

DEAR REPRESENTATIVE: The American Civil Liberties Union strongly urges you to oppose H.R. 2389, ''the Pledge Protection Act of 2005.'' H.R. 2389 is an extreme measure that would remove jurisdiction from all federal courts, including the Supreme Court, over any constitutional claim involving the Pledge of Allegiance or its recitation.

H.R. 2389 would slam shut the federal court house doors to religious minorities, parents, schoolchildren and others who seek nothing more than to have their religious and free speech claims heard before the courts most uniquely suited to entertain such claims. Further, by entirely stripping all federal courts of jurisdiction over a particular class of cases, H.R. 2389 raises serious legal concerns, violating principles of separation of powers, equal protection and due process. The bill undermines public confidence in the federal courts by expressing outright hostility toward them, threatens the legitimacy of future congressional action by removing the federal courts as a neutral arbiter, and rejects the unifying function of the federal judiciary by denying federal courts the opportunity to interpret the law. H.R. 2389 would deny the U.S. Supreme Court its historical role as the final authority on resolving differing interpretations of federal constitutional rights. As a result, each of the 50 state supreme courts would be a final authority on these federal constitutional questions. This would potentially create a situation where we could have as many as 50 different interpretations of any relevant federal constitutional question.

It is in apparent recognition of many of these concerns that no federal bill withdrawing federal jurisdiction in cases involving fundamental constitutional rights has become law since the Reconstruction period. Federal courts were established to interpret federal law and to ensure that the states and the government did not violate the protections in the federal constitution. An effort to deny the federal courts, particularly the U.S. Supreme Court, of jurisdiction over the very sort of claim they were established to hear—governmental conduct that violates a constitutional right—is an extreme attack on the role of federal courts in our system of checks and balances. It strikes at the very intent of the Founders.

While the supporters of this bill see it as an appropriate response to recent court decisions that they dislike concerning the words ''under God'' in the Pledge, the impact of H.R. 2389 would NOT be limited merely to that issue. This bill would remove jurisdiction over ALL constitutional claims, related to the pledge, from ALL federal courts. This could potentially undermine decades of well-established Supreme Court precedents by denying access to the federal courts in cases brought to enforce existing constitutional rights for religious minorities. For example, over sixty years ago, the Supreme Court decided the case of West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). In Barnette, the Supreme Court struck down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance. Under the West Virginia law, religious minorities faced expulsion from school and could be subject to prosecution and fined, if convicted of violating the statute's provisions. In striking down that statute, the Court reasoned: ''To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds * * *. If there is any fixed star in our constitutional constellation, it is that no official, high or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'' 319 U.S. at 639–40.

In 2004, a panel of the U.S. Court of Appeals for the Third Circuit held that a Pennsylvania law mandating recitation of the Pledge, even when it provided a religious exception, violated the Constitution because it violated the free speech rights of the students. Circle School v. Pappert, 381 F.3d 172 (3d Cir. 2004). In Pappert, the court found that: ''It may be useful to note our belief that most citizens of the United States willingly recite the Pledge of Allegiance and proudly sing the national anthem. But the rights embodied in the Constitution, particularly the First Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection.'' Pappert, 381 F.3d at 183.

First comes marriage then comes the Pledge . . . Where will it end? Passage of H.R. 2389 would set a dangerous precedent for responses by Members of Congress to court decisions with which they disagree. In the 109th Congress alone, Congress is considering court-stripping legislation related to the Pledge of Allegiance, marriage, governmental acknowledgement of God, and impeachment of judges for considering certain religion cases.

Over the years, Congress has considered legislation designed to strip court jurisdiction on the issues such as public school busing, voluntary prayer and abortion. Fortunately, none of those proposals was adopted by Congress because legislators understood that setting a precedent for stripping the courts of their jurisdiction over a particular issue might, in the future, be used by some other group of advocates, when in the majority, to establish its views as the law of the land, safely out of the reach of the courts. We urge members of this Committee to oppose passage of H.R. 2389 and not to abandon this tradition of thoughtfulness and restraint.

Please do not hesitate to contact Terri Schroeder at (202) 675–2324 if you have any questions.

Sincerely,

CAROLINE FREDRICKSON,
Director.
TERRI A. SCHROEDER,
Legislative Analyst.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE,
Washington, DC, June 7, 2006.

Reject Efforts to Slam Federal Courthouse Doors on Religious Minorities and Vote ''No'' on H.R. 2389

DEAR REPRESENTATIVE: Americans United for Separation of Church and State urges you to vote ''No'' on passage of H.R. 2389, the ''Pledge Protection Act,'' which is being marked up by the House Judiciary Committee this week. Americans United represents more than 75,000 individual members throughout the fifty states and in the District of Columbia, as well as cooperating houses of worship and other religious bodies committed to the preservation of religious liberty. H.R. 2389 is an extreme and unwise proposal that will undermine the crucial separation of powers at the heart of our government and deny religious minorities from seeking enforcement of their longstanding constitutional rights in the federal courts.

H.R. 2389 would deprive all federal courts—including the U.S. Supreme Court—of their ability to hear cases involving the Pledge of Allegiance and to enforce longstanding constitutional rights against coerced recitation of the Pledge. Americans United firmly believes that the text, history and structure of the Constitution, together with important policy considerations, should lead the Judiciary Committee to soundly defeat this dangerous and misguided bill, as well as any other court-stripping proposal.

THE PLEDGE PROTECTION ACT IS UNCONSTITUTIONAL

Article III, Section I of the United States Constitution creates the Supreme Court and provides the Congress with the power to establish ''such inferior Courts as the Congress may from time to time establish.'' Section 2 of Article III delineates sets of cases that the federal courts may hear, provides for areas of original jurisdiction of the U.S. Supreme Court, and also provides for the appellate jurisdiction of the Supreme Court in other areas ''with such Exceptions, and under such Regulations as the Congress shall make.''

Under Section 2, Congress may have some degree of authority to limit the Supreme Court's appellate jurisdiction, as well as the jurisdiction of lower federal courts. Although the extent of this congressional authority is in dispute and has been the subject of academic commentary over the years, there are clear limits to this authority—and these limits are also found in the Constitution. With the Pledge Protection Act, Congress makes its limited—and disputed—power in Section 2 more important than the fundamental due process rights of citizens and the fundamental notion of separation of powers underlying our government.

THE PLEDGE PROTECTION ACT WOULD VIOLATE DUE PROCESS RIGHTS AND UNDERMINE THE SEPARATION OF POWERS

Basic due process demands an independent judicial forum capable of determining federal constitutional rights. This legislation deprives the federal courts of the ability to hear cases involving fundamental free exercise and free speech rights of students, parents, and other individuals. Congress' denial of a federal forum to plaintiffs in a specified class of cases would force plaintiffs out of federal courts, which are specially suited for the vindication of federal interests, and into

state courts, which may be hostile or unsympathetic to federal claims, and which may lack expertise and independent safeguards provided to federal judges under Article III of the Constitution. It is in apparent recognition of this concern that no federal bill withdrawing federal jurisdiction over cases involving fundamental constitutional rights with respect to a particular substantive area has become law in decades.

Political frustration with controversial court decisions during the second half of the twentieth century provoked Congress to propose a number of court-stripping measures designed to overturn court decisions touching on a wide variety of issues, including: anti-subversive statutes, apportionment in state legislatures, ''Miranda'' warnings, busing, school prayer, abortion, racial integration, and composition of the armed services. All of these measures failed to pass Congress. In each instance, bipartisan concerns over threats to the American system of government and constitutional order gave way to a recognition of these court-stripping measures for what they truly were: attempts to circumvent the careful process required for amendments to the U.S. Constitution. As Professor Michael J. Gerhardt stated in his testimony regarding the ''Constitution Restoration Act of 2004'' before the Subcommittee on Courts on September 13, 2004: ''Efforts, taken in response to or retaliation against judicial decisions, to withdraw all federal jurisdiction or even jurisdiction of inferior federal courts on questions of constitutional law are transparent attempts to influence, or displace, substantive judicial outcomes. For several decades, the Congress, for good reason, has refrained from enacting such laws.'' Like so many failed court-stripping measures that have come before it, the Pledge Protection Act represents yet another illegitimate short cut to amending the Constitution, is against the weight of history, and must fail.

THE PLEDGE PROTECTION ACT IS EXTREME, UNWISE, AND REPRESENTS MISGUIDED POLICY

As drafted, the bill would slam the courthouse doors to religious minorities trying to gain protection for their fundamental constitutional religious and free speech rights. Over sixty years ago, the Supreme Court decided the case of West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). In Barnette, the Supreme Court struck down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance. Under the West Virginia law, religious minorities faced expulsion from school and could be subject to prosecution and fined, if convicted of violating the statute's provisions. In striking down that statute, the Court reasoned: ''To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'' 319 U.S. at 639–40.

Moreover, a panel of the U.S. Court of Appeals for the Third Circuit, holding unconstitutional two provisions of a Pennsylvania law mandating recitation of the Pledge, said, ''It may be useful to note our belief that most citizens of the United States willingly recite the Pledge of Allegiance and proudly sing the national anthem. But the rights embodied in the Constitution, most particularly the First Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection.'' Circle School v. Pappert, 381 F.3d 172, 183 (3d Cir. 2004).

The Pledge Protection Act is an attack on our very system of government. Americans United strongly urges you to leave the independence of the federal judiciary in tact, protect longstanding constitutional rights of religious minorities in the federal courts, and respect free speech rights of countless individuals by rejecting this misguided legislation.

If you have any questions regarding this legislation or would like further information on any other issues of importance to Americans United, please do not hesitate to contact Aaron D. Schuham, Legislative Director, at (202) 466–3234, extension 240.

Sincerely,

REV. BARRY W. LYNN,
Executive Director.

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, June 7, 2006.

House of Representatives,
Washington, DC.

DEAR COMMITTEE MEMBER: On behalf of the more than 900,000 members and activists of People For the American Way, we write to urge you to oppose H.R. 2389, the ''Pledge Protection Act of 2005,'' when it comes before the Committee today, June 7. This legislation would violate the First Amendment, and would set a terrible precedent against the separation of powers embodied in our Constitution that protects the fundamental rights of all Americans.

H.R. 2389 would eliminate any role for the federal courts, including the U.S. Supreme Court, in challenges concerning the constitutionality of the Pledge of Allegiance. This would have an immediate and dramatic impact on the ability of individual Americans to be free from government-coerced speech or religious expression. For example, this legislation would bar the federal courts from enforcing the U.S. Supreme Court's 1943 decision in West Virginia State Board of Education v. Barnette, which barred a local school district from forcing children to recite the Pledge of Allegiance over their religious objections.

Apart from being unwise as a matter of policy, H.R. 2389 appears to be an unconstitutional overreach of Congress' power under Article III regarding the federal judiciary, particularly in light of the Fifth Amendment's due process clause and the Fourteenth Amendment's equal protection clause. Further, it would contradict common sense, and more than 200 years of constitutional history, to allow Congress to circumvent the words ''Congress shall make no law'' by eliminating effective enforcement of the First Amendment by the courts and the U.S. Supreme Court. We agree with U.S. Senator Barry Goldwater who stated about a similar attempt to strip federal courts of jurisdiction over fundamental rights more than twenty four years ago: ''If there is no independent tribunal to check legislative or executive action all the written guarantees or rights in the world would amount to nothing.''

Nor are state courts the appropriate sole and final venue for enforcement of federal constitutional rights. Indeed, H.R. 2389 raises the prospect of 50 different interpretations of the First Amendment. Guarantees of such fundamental rights as freedom of religion, freedom of speech and freedom from governmental religious coercion should not and cannot properly be relegated to such jurisprudential uncertainty. We note that the Reagan Administration, hardly an opponent of federalism, rejected historical and textual arguments for removing jurisdiction over federal constitutional questions to state courts:

''Nor does it seem likely that the [Constitutional] Convention would have developed the Exceptions Clause as a check on the Supreme Court in such a manner that an exercise of power under the Clause to remove Supreme Court appellate jurisdiction would . . . vest [the power] in the state courts. Hamilton regarded even the possibility of multiple courts of final jurisdiction as unacceptable.''

In addition, H.R. 2389 expressly sets the precedent for future Congresses to completely bar U.S. citizens from raising any judicial challenge to federal action. State courts can only assert jurisdiction over the federal government if it consents to be sued. Failing that consent, individuals would be left without recourse to unconstitutional actions of the Congress or the executive branch. Unreviewable federal power to infringe on fundamental individual rights of American citizens is alien to our republic.

Finally, H.R. 2389 threatens to disrupt the framework of checks and balances on governmental power embodied in the U.S. Constitution through the separation of powers by setting the precedent for Congress to remove legislation from constitutional review by the judicial branch. For all practical purposes, Congress could become the sole arbiter of constitutionality on any subject within its powers—or indeed outside its powers since it could legislate away any challenge to congressional interpretation of its own authority. Litigation over the meaning of Article III, a necessary part of the inevitable court challenge to H.R. 2389, could in of itself result in a constitutional crisis deeply damaging to the separation of powers.

H.R. 2389 would set a terrible precedent for separation of powers and protection of individual rights. We urge you to reject the premise that Congress is above the Constitution and vote no on this legislation.

Sincerely,

RALPH G. NEAS,
President.
TANYA CLAY,
Director, Public Policy.

SECULAR COALITION FOR AMERICA,
Washington, DC, June 9, 2006.

DEAR REPRESENTATIVE: The Secular Coalition for America urges you to oppose H.R. 2389, the so-called Pledge Protection Act. Passage of this act would curtail the ability of the judiciary to make Constitutional determinations. It would interfere with the current protection of checks and balances provided by having three independent branches of government.

It is up to the U.S. Senate to approve or disapprove of federal judges. Thus the elected legislative body has both the right and the duty to ensure that our judiciary is of the highest quality. Once they are seated, it is essential that the judicial branch maintain its independence. By allowing the judiciary to be free of political pressures and majority rule, minorities in our nation gain the protections afforded by the First Amendment freedom of religion. This protection has allowed members of minority religions (such as Jehovah's Witnesses) as well as nonreligious Americans to be free of government required religious exercises. Individuals have been free to exercise their own decisions of conscience in public schools and governmental bodies.

Nontheists oppose the 1954 change to the Pledge of Allegiance, which turned that patriotic exercise into a statement of religiously-based division of Americans and used religion as a tool for political gain and theism as a litmus test for patriotism. By inserting religion into government, Americans who do not believe in God are relegated to a second-class citizenship. Regardless of

whether or not individuals support the revision of the pledge however, it is up to the judicial branch to enforce the Constitution, including the Bill of Rights.

Our nation has respected the separation of powers which our founders so wisely created to prevent anyone branch from gaining too much power. Congress must not encroach on the judiciary's power to resolve constitutional issues. If Congress passes constitutional laws, they should be upheld on judicial review. If Congress passes laws deemed to be unconstitutional, it is the duty of the judiciary to overturn such laws. Without such checks and balances, the rights of minorities guaranteed in the Bill of Rights would be meaningless; the Constitution could not be enforced; and a tyranny of the majority would ensue.

Passage of HR 2389 creates a slippery slope that would leave the judicial branch constrained to address only those issues of which Congress approves. Any time the judicial branch makes a decision unpopular with Congress, it could simply pass legislation taking away the court's jurisdiction. Passing this type of court-stripping legislation would subvert the will, not only of the people, but of the founders of our great nation.

Sincerely,

LORI LIPMAN BROWN, Esq.,
Director, Secular Coalition for America.

AMERICAN HUMANIST ASSOCIATION,
Washington, DC, June 8, 2006.

Re Oppose H.R. 2389, the ''Pledge Protection Act of 2005.''

DEAR REPRESENTATIVE, The American Humanist Association (AHA) stands in opposition to H.R. 2389, the ''Pledge Protection Act of 2005,'' which would prevent all federal courts from hearing cases challenging or interpreting rights granted by the First Amendment as they relate to Pledge of Allegiance cases. We urge you to vote against this bill, which would compromise long held American legal principles of due process and separation of powers by shutting the federal courthouse doors to large numbers of Americans.

If passed, the Pledge Protection Act would set a dangerous precedent by stripping federal courts of judicial independence and paving the way to preventing federal judges from ruling on other controversial social issues from abortion and gun control to school vouchers and school prayer. As we warned with the Marriage Protection Act of 2005 (H.R. 1100), attempts by Congress to strip the judiciary of their power to review legislation are inequitable and will open the door to more of the same. If the Pledge Protection Act passes it will fuel the fires for similar bills.

Denying access to the federal court system is unacceptable to religious and Humanist minorities who have a due process right to have their cases heard.

The Pledge Protection Act presents a serious separation of powers concern. Federal courts are uniquely prepared to interpret federal constitutional concerns and to serve as a check on the constitutionality of actions of Congress and the Executive branch. That's why constitutional concerns are raised when an attempt is made to block the courts from reviewing and interpreting the constitutionality of a single act.

Congress should not disrupt the balance of power intended by our Founding Fathers. Restricting the federal courts' ability to protect First Amendment rights severely undermines the American judicial system.

Humanists are particularly concerned about this bill because it would violate judicial independence in order to undermine American citizens, in this case those of a minority faith or no religion, the right to access federal courts to challenge a piece of legislation.

In the past Congress has rejected attempts to withdraw controversial issues from the scope of federal courts and the AHA encourages you to do so again at this important juncture. We urge you to defend due process and separation of powers and vote no on the Pledge Protection Act.

Sincerely,

MEL LIPMAN,
AHA President.

Mr. BLUNT. Mr. Chairman, yielding myself 15 seconds, I would like to point out that clearly this is in absolute agreement with Marbury v. Madison. Even in that case, the Chief Justice dismissed cases later when the Federal courts had not been granted jurisdiction.

Granting jurisdiction is the constitutional job of this body.

Mr. Chairman, I yield 4½ minutes to the gentleman from Florida (Mr. STEARNS).

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Chairman, I thank my distinguished colleague from Missouri for yielding me time.

The question was posed by the gentleman from New York and others is this Pledge Protection Act, H.R. 2389, constitutional? Is the whole concept of ''under God'' part of our Pledge constitutional? I submit this humble penny with Abraham Lincoln's picture on it. Do you know what it says on the side? ''In God We Trust.''

Behind the Speaker's chair, ''In God We Trust.''

At the Supreme Court they pray every day, asking for God's blessing. So Surely when we have a pledge, we should be able to use the word ''under God.'' Throughout our history this concept, as the United States being a providential Nation, has been the cornerstone of our success.

Would our Founding Fathers, if they were here today, decide to take ''under God'' from the Pledge? I do not think so. In fact, let's go and look at what the Founding Fathers talked about. This belief in our Nation being under God is a central part of our heritage. History bears this out.

Even before independence, a central theme among all forefathers was that our liberty flowed from our Creator. Josiah Quincy was one of these leaders. Not a lot of people know who he was. He was a charismatic leader in the American Revolution and outstanding lawyer. He wrote a series of anonymous articles for the Boston Gazette in which he opposed the Stamp Act and other British colonial policies. He, along with John Adams, bravely defended the British soldiers at a trial for the Boston Massacre, to show the world that the colonialists valued the rule of law above all.

In 1774, he was sent as an agent to argue the colonial cause for independence in England. He perished on the journey over. Yet, before he left, these are his immortal words that he uttered: ''For under God, we are determined that wheresoever, whensoever, or howsoever we shall be called to make our exit, we will die free men.''

Our Founding Fathers uttered similar statements time and time again, my colleagues, yet perhaps never more eloquently than the Declaration of Independence when even Thomas Jefferson penned the famous lines that ''we hold these truths to be self-evident: that all men are created equal; that they are endowed by the Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness.''

This same man who first wrote about separation of church and state also acknowledged, ''The God who gave us life, gave us liberty at the same time.'' And so over the years our Nation's leaders have freely expressed their beliefs in a higher providence for this country.

In our darkest hour, President Lincoln during the Civil War and later President Kennedy during the civil rights movement reaffirmed that this Nation was founded under God, and that all men and women living here are entitled by God to equal liberty.

Even more recently, in the midst of the Cold War, my colleagues, President Reagan argued that ''freedom prospers when religion is vibrant and the rule of law under God is acknowledged.''

So the whole idea of under God has been passed on from generation to generation. We are blessed by this concept. The Constitution was drafted to guard our liberties, obviously, our God-given liberties, and wisely established a system of checks and balances for our government structure. Mr. AKIN pointed these out. The power of Congress to limit jurisdiction of the courts is one of those primary checks on the power of the judiciary. So this is all according to procedures that our Founding Fathers established.

Article III, section 2 grants Congress the power to limit the jurisdiction of Federal courts. So what we are doing today is according to the Constitution.

The Pledge Protection Act invokes the constitutional powers and removes the Pledge from the jurisdiction of Federal courts. I ask you to support this act. I urge my colleagues for future generations to acknowledge our providential point in history.

Mr. NADLER. Mr. Speaker, the gentleman is commenting and his entire speech was about the desirability or the worth of the words ''under God,'' which I think almost everybody agrees with. The issue in this bill is court-stripping. Do we take away from the courts the right to decide, to protect people's rights?

Mr. Speaker, Mr. STEARNS may be right in everything that he is saying, but he does not seem to have the confidence that the courts will agree with him, because if he did, he would not be supporting this legislation.

Mr. STEARNS. Mr. Chairman, will the gentleman yield?

Mr. NADLER. I yield myself 10 seconds so I can yield to the gentleman from Florida.

Mr. STEARNS. Would you agree that we here in Congress can have the right in the separation of powers to overrule the Supreme Court?

Mr. NADLER. To overrule the Supreme Court? Certainly we do not have that.

Mr. STEARNS. Not to overrule, but to pass laws here to check the balance of the Supreme Court?

Mr. NADLER. We have the right, but I do not believe we have the right, given the fact that the Bill of Rights postdates the grant of the jurisdiction-setting authority in the Constitution, I do not think we have the right to take away from the Supreme Court the ability to protect constitutional rights.

Mr. Chairman, I yield 5 seconds to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Chairman, when I listed the organizations opposed to the bill, I inadvertently left off Americans United for Separation of Church and State and the National Council of Negro Women.

Mr. NADLER. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. BERMAN).

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding me time.

As the gentleman pointed out, the gentleman from Florida gave a very compelling argument for why it is appropriate to have ''under God'' in the Pledge of Allegiance, and therefore concludes that since he thinks that is in jeopardy, based on the court case now moving through the judicial system arguing for stripping away the jurisdiction of the court to decide that issue.

But the bill before us goes far beyond the issue of under God, and that is why I would like to ask if the majority whip, I would like to use my time to make sure that you and I have the same understanding of the purpose of this bill.

Let's say, for example, that a school board in West Virginia decides that every student in the school system must recite the Pledge of Allegiance at the beginning of the school day. And a Jehovah's Witness family goes to court, to State court, after this bill is passed and says, it is a violation of our religious principles to pledge allegiance to anyone other than God. We are prepared to make all kinds of statements with respect to our regard for the country, but we cannot pledge allegiance to anyone but God.

And then that case goes to the State courts, and the West Virginia Supreme Court decides that, no, the school board is right. They have the right to compel every student in that school system to recite the pledge, even if it violates their religious principles. Or maybe it is telling an Orthodox Jewish child that they have to remove their skull cap for the recitation of the Pledge, and they say, no, if the West Virginia school board ruled that way, the individual's right to exercise their religious principles by keeping their skull cap on when they are outside and in this public arena is trumped by the school board's policy.

Should the U.S. Supreme Court be able to take that case on appeal that compels a decision that a State court, that compels the recitation of the Pledge in a way that violates the fundamental free exercise of religion of a student? That is my question.

Mr. BLUNT. If my friend is yielding to me, the principal sponsor of the bill, Mr. AKIN, has said he would like to respond to that. If that is appropriate, I would like for that to be our response.

Mr. BERMAN. Mr. Chairman, I yield to the gentleman from Missouri (Mr. AKIN) 1 minute of the remaining time I have.

Mr. AKIN. Mr. Chairman, as the gentleman made the scenario, let's assume the bill passes that we are discussing now, is signed by the President.

Mr. BERMAN. My assumption is this bill is now law.

Mr. AKIN. Now is law. What happens then is you are going to a particular State, you are saying West Virginia. And what happens is that a school board or something like that in the State decides to just basically go against what is already established Supreme Court policy.

From 1944, the Supreme Court made the ruling that nobody is required to say the Pledge of Allegiance. We have no interest in changing that. We think that is good policy.

Mr. BERMAN. Mr. Chairman, reclaiming my time. Because under this bill, they can decide to violate that Supreme Court decision, and the West Virginia Supreme Court, now the final arbiter of it, says, we did not like that decision in the first place, and now the Supreme Court cannot take jurisdiction of this case, so they decide to reverse, for West Virginia purposes, the Barnette case that the Supreme Court decided in 1944, and this bill strips away the jurisdiction of the Supreme Court to say, you did not follow our precedent.

Mr. AKIN. What you are saying is, first of all, you are making, obviously you are taking this to a pretty extreme situation. You are saying a whole series of courts in West Virginia are going to overturn Supreme Court policy on the fact that people have to say the Pledge.

So first of all, they are going completely against what the Federal courts have already established. They then expose themselves to the checks and balances within that State. In at least 45, probably more, of the States, there are provisions where those judges can be removed by the people of that State.

Mr. BERMAN. Reclaiming my time. If you had stripped away the right of the U.S. Supreme Court, of the Federal courts to decide whether segregated schools, whether the doctrine of separate and equal should stand or whether it violated the 14th amendment of the Constitution, there are many States in this country where every State court would have affirmed that separate is equal, is compliant with the 14th amendment, and in many of those States, the voters in those States would have been quite happy with that decision.

You have eliminated the Supreme Court's ability to review fundamental decisions involving first amendment rights.

Mr. NADLER. Mr. Chairman, I will yield the gentleman 30 seconds, and yield for an answer to how he would have prevented, under this bill, all the States from negating the Supreme Court's Brown v. Board of Education ruling.

□ 1300

Mr. AKIN. Well, the situation is that you are dependent on this bill with the various checks and balances on the Supreme Courts in the States. That is, those justices could be impeached for violating the Supreme Court.

Mr. BERMAN. And the voters of that State.

Mr. AKIN. And the voters of that State. It depends on the State laws.

Mr. BERMAN. The first amendment was to protect the exercise of religion, even if the majority didn't like that religion.

Mr. AKIN. The bottom line is we have a system of republics. We have a system of federalism. We have 51 established republics, one federated and 50 States.

Mr. BLUNT. Mr. Chairman, I yield 2 minutes to my neighbor from Arkansas (Mr. BOOZMAN).

Mr. BOOZMAN. Mr. Chairman, I come to the floor today to support this legislation that will preserve America's Pledge of Allegiance. This Congress is working to strengthen America to taking steps to continue job creation, keeping our economy growing, providing the tools that we need to fight the war on terrorism and address the problems that are leading to high energy prices.

However, we also have a responsibility to take a few minutes today to reinforce the spirit and unity of the American people by protecting our Pledge. The Pledge of Allegiance is not just a statement that our kids rehearse in schools, it is an expression of we as Americans.

The American people are united by devotion, not just to our flag but to our country. Our devotion is not just to our public, but to our principles, including liberty and justice for all. Our shared Pledge of Allegiance should not be rewritten on a whim by a few judges against the will of the overwhelming majority of American public.

That is why this legislation is so important, and I appreciate Mr. BLUNT's and Mr. AKIN's leadership on this issue. The Pledge Protection Act, which has 197 cosponsors, passed the House in the

108th Congress by a wide margin. Article III of the Constitution gives Congress the authority to pass this legislation. We should use this authority with restraint.

But when it comes to protecting America's Pledge of Allegiance, we should take these thoughtful steps to exercise the will of the American people.

Mr. NADLER. Mr. Chairman, I yield 2½ minutes to the distinguished gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Chairman, I rise in opposition to this bill, and it does pain me to be on the other side of a piece of legislation that so many of my friends are advocating so sincerely on the other side.

Mr. Chairman, I yield to no one in my commitment to the Pledge of Allegiance, and the Pledge of Allegiance that includes the words ''under God.'' However, it does not follow that the appropriate way to deal with this issue is to strip Federal courts of their jurisdiction to hear cases relating to the Pledge of Allegiance.

First of all, I don't believe that my colleagues who support H.R. 2389 realize the consequences of this bill, even though we just had a discussion about what those consequences might be. H.R. 2389 does not strip State and local courts from jurisdiction related to the Pledge, only the Federal courts, and specifically strips the U.S. Supreme Court of its ability to overrule State supreme courts in this matter.

So, for example, if the highest court in a State like Massachusetts rules that it is unconstitutional under the Constitution for the State schools to start their day with a Pledge of Allegiance, including the words, ''under God,'' H.R. 2389 would prohibit the U.S. Supreme Court from overturning that decision. Such a result would be ironically and supremely counter to the stated goals of this bill's proponents.

But that is what would become the result of this language becoming law. Members on my side of the aisle should seriously consider the consequences of the precedents that are being set.

Republican support for court-stripping makes it that much easier for the other side to someday strip a conservative Supreme Court of jurisdiction on an issue paramount to our liberty. For example, if our judges on the Court remain devoted to the second amendment, rather than upholding a universal gun ban that is put into place by a future President and Congress, and the other party, they will accuse our President of stripping the court in order to get their way.

Here we are neutering our ability to have protections for the constitutional things we believe in the future, in order to achieve a temporary, I might even say a political, goal in the Pledge of Allegiance.

The supporters of H.R. 2389 will come to regret this day when they are being quoted by some future liberal Congress in order to strip the Court of a decision made to protect our liberties.

Mr. Chairman, let us consider the long-term consequences of our actions and let us look before we leap. I would suggest that we vote ''no'' on this. That is the Reagan and conservative position.

Mr. BLUNT. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee (Mr. WAMP).

Mr. WAMP. I thank the distinguished majority whip.

Mr. Chairman, with respect, religion in the United States is rightly pluralistic. We are or in no way should we be theocratic at all. As a matter of fact, one of the great threats in the world today, jihadism, is born out of theocracy.

That doesn't mean, though, that this country should be godless. One of my greatest, one of the great sayings I love is if there is no God, nothing matters. But if there is a God, nothing else matters. We should remember that today.

Abraham Lincoln said we do not claim to have God on our side, but we strive to be on his. We should not and cannot rewrite history to ignore our spiritual heritage. It surrounds us. It cries out for our country to honor God and to seek and supplicate His will in our country's life.

Today the people from my State of Tennessee would listen to this debate, or even talk about a reference to God on our money or in the Halls of Congress or in our Pledge and say, please, let common sense and logic win the day and prevail versus legal mumbo jumbo.

In closing, let me just thank God, on the floor of the House, for not turning away from us even though we seem to be turning away from Him.

Mr. NADLER. Mr. Chairman, I now yield 3 minutes to the distinguished ranking member of the Judiciary Committee, the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. I thank the ranking chairman of the Constitutional Subcommittee, Mr. NADLER, for yielding to me. I commend him for the incredible work that we have done to try to bring understanding to how difficult and unworkable this so-called Pledge Protection Act is.

Mr. Chairman, I hold in my hands this letter that has just come in to the Judiciary Committee from the American Bar Association, their Governmental Affairs Office.

The controlling sentence is this: ''As a matter of policy, Congress should not jettison our foundational principles because of current dissatisfaction with the controversial decision of the Supreme Court or lower Federal courts by permanently stripping the jurisdiction of the Federal courts to hear certain categories of cases. Rather than strengthening its legislative role, Congress, by pressing its own checking power to the extreme, imperils the entire system of separated powers.''

Ladies and gentlemen, this unconstitutional court-stripping bill, and it would be found unconstitutional if enacted, is only the latest attempt by a Congress to force a pluralist society into a one-size-fits-all set of beliefs. This is a remarkable violation of the separation of powers and the establishment clause.

If the act were to become law, it would clearly be held unconstitutional. Only State courts would be able to constitutionally challenge the Pledge, and so we would therefore end up with a 50-State collection of views as to what the free exercise clause, the establishment clause, meant in this context.

In addition, think of what this means to those groups that depend on this provision of our law not to be able to bring their issues to the court. This legislation would strip all Federal courts, including the Supreme Court, from hearing first amendment challenges to the Pledge of Allegiance and from enforcing longstanding constitutional rights in the court, and would slam the Federal courthouse door on religious minorities trying to do nothing more than enforce a fundamental constitutional right that they have had for over 60 years.

Please, let us turn this Pledge Protection Act down this afternoon.

AMERICAN BAR ASSOCIATION,
GOVERNMENT AFFAIRS OFFICE,
Washington, DC, July 18, 2006.

Re H.R. 2389, the Pledge Protection Act of 2005.

DEAR REPRESENTATIVE: We understand that the House is scheduled to consider H.R. 2389 tomorrow. We are writing to express our opposition to this legislation, which would strip from all federal courts jurisdiction to hear constitutional challenges to the interpretation of, or the validity of, the Pledge of Allegiance.

Our views on H.R. 2389 are informed by our long-standing opposition to legislative curtailment of the jurisdiction of the Supreme Court of the United States and the inferior federal courts for the purpose of effecting changes in constitutional law. The ABA has taken no position on the underlying issues regarding recitation of the Pledge of Allegiance in public schools; instead, our strong opposition to H.R. 2389 and other pending legislation that would strip the federal courts of jurisdiction to hear selected types of constitutional cases is based on our concern for the integrity of our system of government.

This legislation would authorize Congress to use its regulatory power over federal jurisdiction to advance a particular legislative outcome by insulating it from constitutional scrutiny by the federal judiciary. In addition to being constitutionally suspect, this legislation would establish a dangerous precedent if enacted. As a matter of policy, Congress should not jettison our foundational principles because of current dissatisfaction with a controversial decision of the Supreme Court or lower federal courts by permanently stripping the jurisdiction of the federal courts to hear certain categories of cases. Rather than strengthening its legislative role, Congress, by pressing its own checking power to the extreme, imperils the entire system of separated powers.

If enacted, H.R. 2389 would restrict the role of the federal courts in our system of checks and balances and thereby limit the ability of the federal courts to protect the constitutional rights of all Americans. Indeed, this legislation would leave the state courts as

the final arbiters of federal constitutional law, creating the possibility that some state judges might choose not to follow Supreme Court precedents. Because the legislation would nullify the Supremacy Clause in certain classes of cases, the Constitution could mean something different from state to state; and, contrary to the expressed intentions of the Framers, our fundamental rights and the balance of power among the branches would be subject to evanescent majority opinion.

At a time when Congress is accusing the federal courts of overstepping their constitutional role and calling for judicial restraint, we urge you to likewise exercise legislative restraint and demonstrate your continued commitment to the doctrine of separation of powers and a government composed of separate but coequal branches by voting to defeat passage of H.R. 2389.

If you have any questions regarding our position, please have your staff contact Denise Cardman, Deputy Director of the Governmental Affairs Office.

Sincerely,

ROBERT D. EVANS.

Mr. BLUNT. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. I thank the distinguished majority whip for yielding.

Mr. Chairman, I rise in strong support of the Pledge Protection Act and commend its author, the gentleman from Missouri (Mr. AKIN) for his yeoman's work on this thoughtful legislation.

As a member of the Judiciary Committee, I admire my colleagues on the other side of the aisle for their intellectual acumen and their commitment to their view and their philosophy of government. But while each of us may have a different philosophy of government, we don't get to have different facts.

The clear policy of Article III, section 2 of the United States Constitution reads, ''In all other cases before mentioned, the Supreme Court shall have developed jurisdiction, but it is the law and the fact with such exceptions and under such exceptions as the Congress shall make.'' It is black letter law in the Constitution of the United States of America that this body, this Congress, shall have the authority to set the jurisdiction of the courts.

So if I may say, respectfully, let us stop with all the conversation about anticonstitutional action being taken. In fact, restricting the Federal courts' jurisdiction is a common practice in the House of Representatives, and a long litany of recent legislation, like the Black Hills National Forest, the recent Class Action Fairness Act, attests to that.

But we are here about the business of protecting the contents of the Pledge of Allegiance, which some Federal courts have either resolved as unconstitutional or left unresolved.

We stand here today to say those words, which appear above you, Mr. Chairman, in the phrase ''in God we trust'' in our national model, words which were reflected in our founding documents that speak of a Nation that believes its rights are endowed by our Creator, and words that President Abraham Lincoln spoke at Gettysburg, that this is one Nation under God, be protected and vouchsafed in our Pledge.

Let us take this jurisdiction away, which is our constitutional power to do, and leave that power with the people of the United States and the States severally.

Mr. NADLER. Mr. Chairman, I yield to the gentleman from Texas for a unanimous consent request.

(Mr. GENE GREEN of Texas asked and was given permission to revise and extend his remarks.)

Mr. GENE GREEN of Texas. I thank my colleague for yielding.

Mr. Chairman, I rise today in support of H.R. 2389, the Protect the Pledge Act.

I strongly support the Pledge of Allegiance. In fact, in the 107th Congress I introduced H.J. Res. 103, an amendment to the Constitution that would affirm that the Pledge of Allegiance in no way violates the First Amendment.

Unfortunately, Congress did not pass the resolution before it adjourned for the 107th Congress.

As an original cosponsor of H.R. 2389, I believe it is necessary to protect the Pledge of Allegiance from unnecessary court battles, but without infringing on the rights of the people.

Article III of the Constitution states that Congress has the power to define jurisdiction of Federal district and appellate courts.

This bill still allows for our system of checks and balances to work as it has for over 200 years.

The Pledge of Allegiance is an important symbol of the privileges and rights that our Founding Fathers fought so desperately to preserve.

It deserves protection from those trying to remove the words ''under God.''

Mr. NADLER. Mr. Chairman, how much time do I have left?

The CHAIRMAN. The gentleman has 3½ minutes.

Mr. NADLER. The other side?

The CHAIRMAN. They have 13½ minutes.

Mr. BLUNT. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. I thank the majority whip for yielding. I especially thank Mr. AKIN for bringing this bill before this Congress. When we first met, he approached me with this bill, and I said, oh yes, Article III, section 2, I will sign on. Then we got to know each other after that. So it is a proud moment for me to stand here and stand with the gentleman from Missouri and God-fearing and God-loving people across this country.

□ 1315

The question about the constitutionality of court-stripping Article III, section 2, I think Mr. PENCE addressed it very well. Black-letter language in the Constitution was such exceptions and under such regulations as the Congress shall make, and those exceptions are legion.

In fact, the landmark case is Ex parte McCardle 1869 where Congress had authorized Federal judges to issues writs of habeas corpus, and they purported to be acting under its authority under Article III, section 2 to make those exceptions.

But in reviewing the statutes the Supreme Court's jurisdiction granted, they were not at liberty to inquire into the motives of the legislature. We can only examine its power under the Constitution. In fact, the majority decision on the Supreme Court said this: ''Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle.'' Ex parte McCardle, 1869.

And I would point out that Justice Scalia in the Hamdan case so recently wrote in his opinion, albeit in dissent, he said that ''the Court . . . cannot cite a single case in the history of Anglo-American law . . . in which a jurisdiction-stripping . . . was denied immediate effect in pending cases.'' But ''by contrast, the cases granting such immediate effect are legion . . . they repeatedly rely on the plain language of the jurisdictional repeal as an 'inflexible trump,''' and we know in our current experience in Congress, we have done this several times, particularly the Daschle case with Blackhawk Timber.

Mr. BLUNT. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. HENSARLING).

Mr. HENSARLING. Mr. Chairman, I thank the distinguished majority whip for yielding. I certainly thank the gentleman from Missouri (Mr. AKIN) for his leadership on this issue.

Mr. Chairman, the author of the Declaration of Independence, Thomas Jefferson, once wrote: ''Can the liberties of a Nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?''

Now, I have heard Democrat after Democrat saying that we should not be debating the Pledge Protection Act here today. Apparently, whether the phrase ''one Nation under God'' is stripped from our Pledge by activist judges is of little importance to them, but it is to most Americans, and it should be to our Democrat colleagues as well.

Mr. Chairman, what we are debating here today is nothing short of our very liberty. What could be more worthy of this body than a debate about our liberty?

When our forefathers gave birth to this new Nation, they also gave birth to a radical, revolutionary idea in history, the idea that our rights do not emanate from the State, that they are granted to us from the Almighty.

Who among us have forgotten the words enshrined in our Declaration of Independence that we are endowed by our Creator with certain unalienable rights? The answer appears to be some of our Democrat colleagues.

Nothing is more central to the foundation of our very liberty than the acknowledgment of God in public life, not the Christian God, the Jewish God or the Muslim God, but God, the Creator, as broadly defined and acknowledged and worshipped in many faiths and traditions.

But, Mr. Chairman, there is now a concerted effort among some, including apparently the Ninth Circuit Court of Appeals, to chase God from the schoolhouse, the courthouse and the statehouse, not to mention our very Pledge of Allegiance.

Through H.R. 2389, using our powers under Article III, section 2, we should stop them and protect liberty by enacting the Pledge Protection Act.

Mr. BLUNT. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DREIER), the chairman of the Rules Committee.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Chairman, I thank my very good friend, the distinguished majority whip, for yielding time, and I congratulate my friend from Missouri (Mr. AKIN) for having shown his very strong commitment to the U.S. Constitution. As we all know, the specificity is Article III, section 2.

As I was talking to a friend of mine in Los Angeles yesterday, he was asking, what are you bringing up in the Rules Committee today? When I told him that we were bringing this measure to deal with the Ninth Circuit Court's decision, basically throwing out the use of ''one Nation under God'' in the Pledge of Allegiance, he, like most people, was horrified. He said, let us look at the natural extension of the Ninth Circuit Court's decision.

Well, for starters, in the County of Los Angeles, Mr. Chairman, we have already seen the removal of the cross from the seal of the County of Los Angeles. It seems kind of silly, and there obviously is a lot of outrage in southern California about that.

But then one must conclude that the natural extension of this, when we have dealt with the seal of the County of Los Angeles, let us look at some of the cities in California: The City of Angels, Saint Francis, San Francisco, San Diego, another saint. I found that my city that I reside in, the city of San Dimas, is the name for the reformed saint of thieves, San Dismas.

But one must come to the conclusion that if we are going to continue down this road, that the west coast would become what many in the country probably already believe it is, and that would be the lost coast, and I find that to be a very troubling sign, that we are moving in the direction to overturn that wise decision that was made by the United States Congress in the 1950s when President Eisenhower was here.

I think that we should realize that common sense needs to be applied when we look at an instance like this. The Ninth Circuit Court in California clearly overreached, Mr. Chairman, and as we look at how far they could go, I find the direction to be very, very troubling.

I thank my friend for yielding.

Mr. BLUNT. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Chairman, the concern about the Constitution is certainly worthwhile, but when it says very clearly Article III, section 2, that in all other cases except those specified or mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact with such exceptions and under such regulations as the Congress shall make, it also allows us to set the jurisdictions of the local courts.

So, clearly, this is something that is constitutional to take up. As an old judge and a former chief justice of an appellate court, those things are important to us.

Our friend from New York indicated that it seems like some of us do not have much faith in the Supreme Court, and he is right, some of us do not. I would submit to you that while they are lingering under this infirmity or disability of being prepositionally challenged, that this is a good issue to take up and to remove jurisdiction on.

For example, in the 10th amendment it says all the things not specified are reserved to the States and to the people. The Supreme Court seems to think that means reserved from the States and from the people. They are prepositionally challenged. They think freedom of religion means freedom from religion.

There is so much rewriting of history, the separation of church and state. It is not in the Constitution. That is in a letter that Thomas Jefferson wrote to the Danbury Baptists about not specifying a specific denomination, and at the same time Madison wrote the first amendment, Jefferson wrote those words in a letter, they came to church, a nondenominational Christian church, right down the hall in Statuary Hall. For about 60 years there was a church down there.

So the question before us is, is this an issue we want to remove from the Supreme Court's consideration until they remove or are able to overcome the disability of being prepositionally challenged? I certainly think it is.

Mr. BLUNT. Mr. Chairman, I yield myself 1½ minutes just to say that this debate clearly, once again, emphasizes the responsibility of the Congress to decide the jurisdiction of the courts.

It does not decide who has to say the Pledge of Allegiance. It does not decide separate but equal. In fact, separate but equal was decided by the Supreme Court just like the Dred Scott case was decided by the Supreme Court, which is why Abraham Lincoln, in his inaugural address, specifically talked about the danger of the Congress and the country letting the Court be the sole decision of these kinds of issues.

This is an issue that clearly resonates to the heart of what we are about as a country. It is the heart of what we are about as a people. All of our documents, our coins, our institutions, the Constitution, the Declaration of Independence, all have recognized a being superior to ourselves.

We think that protection for that phrase and other phrases in the Pledge is appropriate. Certainly we have not anticipated that State courts, who, by the way, were also recognized by the early Congress as appropriate determiners of some Federal laws, and early congressional determination in an early Supreme Court decision was that Federal laws that have been upheld by the State courts would not be subject to Federal review. This is in line with our responsibilities. It would be a responsibility some would like to suggest is different than it is, but it is our responsibility.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, every word that we have heard uttered on this floor by the majority side has, as Mr. SCOTT said, increased the likelihood of the courts ordering that the words ''under God'' in the Pledge of Allegiance cannot be recited in a public, in a school situation where there is an imputation of coercion or pressure because the students are, in fact, under the direction of the State agent, namely, the teacher.

As someone who very deeply believes in God, I think it is insulting to say that the words ''under God'' are not important, and yet that is the defense that is offered in court because the Constitution says there should be no establishment of religion. Well, saying that schoolchildren must recite the Pledge of Allegiance with the words ''under God'' is not an establishment of religion. The defense is, no, it is not because this is de minimis; it is not important; it is minor. I do not believe the words ''under God'' are minor or de minimis, unimportant. I think that it is an insult to religion.

But that whole question is for the courts, not for us, and here we are seeing another bill to strip the courts of jurisdiction. We are getting to a point where it is becoming boilerplate in any controversial issue to say the courts shall not have jurisdiction.

Consider this, the Defense of Marriage Act, the Pledge, we passed the bill a few weeks ago on the floor here saying that no funds should be expended to enforce a court order in some court in Indiana because we do not like what the courts do, or we think we might not like what the court will do; we will strip them of jurisdiction.

This is a danger to all our constitutional rights. The only thing that protects our rights as Americans, that

protects our freedom of speech, religion, press, assembly, et cetera, is the ability to go to court and tell the President or the Governor or whoever, you cannot do that, you cannot force them to do that, you cannot put them in jail for not doing it. Without the protection of the court, rights are meaningless.

There is a maxim in law: There is no right without a remedy. What we are doing here is saying to people who are unpopular, to people who may not want to recite the words ''under God,'' they may be wrong and unpopular, but we are saying you cannot go to court to defend yourself and assert your constitutional rights. It is very dangerous. As was pointed out before, if we had done that before, we would still have segregation in this country because in every State we would have stripped the Supreme Court of the ability to declare separate but equal schools unconstitutional. The State courts would have soon said it is fine, and we would still have Jim Crow.

Almost lastly, we should not have a separate law in every State. We should not have the Constitution mean different things in New York and New Jersey. We should be one country. That is why the Supreme Court is vested with jurisdiction to rule on appeals from the State supreme courts.

Finally, this bill is itself unconstitutional. Someone said that the courts have upheld Congress' ability to limit jurisdiction. Sure, they have. Every single case has upheld limitations to jurisdiction, regardless of subject matter, never with regard to constitutional claims, not one case in the history of the Republic.

At a hearing that was held 2 years ago on a similar bill, the majority witness, the Republican witness, professor of constitutional law, said the following: ''The due process clause of the fifth amendment requires that a neutral, independent and competent judicial forum remain available in cases in which the liberty or property interests of an individual or entity are at stake. The constitutional directive of equal protection restricts congressional power to employ its power to restrict jurisdiction in an unconstitutionally discriminatory manner,'' which is what this bill does.

There is no ability, for example, to constitutionally provide that Republicans, but no one else, may have access to the Supreme Court. No one will think Congress could do that. This bill is clearly unconstitutional for the same reason.

Mr. Chairman, I yield back my time.

□ 1330

Mr. BLUNT. Mr. Chairman, I yield the balance of our time to the gentleman from Missouri (Mr. AKIN).

The CHAIRMAN. The gentleman from Missouri is recognized for 2 minutes.

Mr. AKIN. Mr. Chairman, I would like to start by quoting a person who I believe is the founder, or at least acknowledged as the father, of the Democratic Party, Thomas Jefferson. His words encased in stone on his monument read: ''The God that gave us life gave us liberty.'' It goes on to say: ''Can the liberties of a people be secure if we remove the conviction that those liberties are the gift of God?''

The author of our Declaration well understood that it is impossible to assert that we have inalienable rights and at the same time ignore the person that gave us the inalienable rights, the God that provided those rights itself.

This question goes to the heart of what America has always stood for and always fought for. We believe that there is a God that gives basic rights to all people, and it is the job of the government to protect those rights. If the courts come to the decision that we cannot acknowledge God, then we have ripped the heart out of the logic of what makes America, the fact that our rights come from God Himself, and we have thumbed our nose at Thomas Jefferson and our Declaration and our 300-plus years of history.

Now we have good reason to fear that the Court will not be content to ignore just the fifth amendment and say that you can take private property from people and redistribute it without a public purpose, but that they may also decide to take the first amendment and turn it upside down and use it as a sword of censorship rather than an oasis of free speech.

I am not persuaded by the pious hand-wringing of liberal activists who flinch not at the courts' unfettered march to create some imagined utopia at the expense of the separation of powers in the Constitution itself.

It is time for the Congress to reassert our legislative authority. It is time for the Congress to signal an end to the courts' freewheeling forays of unchecked legislative license.

Mr. WELDON of Florida. Mr. Chairman, I rise in strong support of H.R. 2389, the Pledge Protection Act of 2005. This legislation is important to ensuring that over-zealous Federal courts do not strike down the U.S. Pledge of Allegiance. In Newdow, Ninth Circuit ruled that the pledge was unconstitutional. The U.S. Supreme Court struck down the Newdow decision based not on the substance of the issue, but rather because it found that Newdow did not have standing. The Supreme Court did not address the underlying question regarding whether the phrase ''under God'' was constitutional. The Ninth Circuit is expected to rule on this issue in March 2007.

The bill before us would prohibit Federal courts from ruling on issues related to the Pledge of Allegiance. Article III, Section 2, Clause 2 of the U.S. Constitution gives the Congress the authority to set such limits. The Constitution states:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to law and Fact, *with such Exceptions, and under such Regulations as the Congress shall make* [emphasis added].

Mr. Chairman, today, by passing this law, we are making those exceptions.

I rise in strong support of this legislation and urge my colleagues to join me in support of it.

Mr. CARDIN. Mr. Chairman, I rise today in opposition to H.R. 2389—the Pledge Protection Act—a bill which does not protect the Pledge of Allegiance, but instead endangers the constitutional balance between the legislative and judicial branches.

I believe in the Pledge of Allegiance. In the wake of the Ninth Circuit Court of Appeals opinion in Newdow v. U.S. Congress in 2002, the House acted swiftly to affirm our support of the Pledge as it has existed since 1954. I voted in favor of a resolution that disagreed with the court's opinion that the words ''under God'' in the Pledge violate the Establishment Clause of the Constitution.

My opinion today remains the same: the Pledge of Alliance is a simple, eloquent statement of American values. Each morning millions of school children pledge allegiance not only to the flag but to the Nation and our values and our principles. This act, like the prayer that opens each session of the House and the call that brings the Supreme Court to order, reminds us all of the greater context of our purpose.

I oppose this legislation, not because I do not support the Pledge of Alliance, but because I know that this legislation does not achieve its goal. This legislation takes a bold step towards a radical concept which undermines the constitutional checks and balances so crucial to our system of Government. We have taken steps to protect the Pledge and we will continue to do so—but this is not the way.

This bill proposes to strip the courts of their just jurisdiction. While the Congress is granted the power to create and establish Federal courts and this jurisdiction, this power has always been used to promote judicial efficiency. It has not, and should not, be used to stifle debate on any issue regarding fundamental rights and liberties.

Since the Supreme Court decided the case of Marbury v. Madison in 1803, the judiciary has performed its unique role of interpreting laws of this country. This bill is unconstitutional because it would fly in the face of 200 years of our constitutional tradition. I cannot imagine our democracy could long endure a system in which the Congress may take from the courts the ability to hear cases regarding the freedom of speech, the freedom of religion, civil rights, or privacy.

The 108th Congress considered this legislation, and the Senate refused to pass this measure. Indeed, in this Congress the House Judiciary Committee refused to favorably report the bill to the full House.

The courts are now properly continuing to review constitutional challenges regarding the Pledge of Allegiance. The Supreme Court has dismissed a case regarding the Pledge, and the Ninth Circuit is again reviewing this matter. Congress has gone on record in support of the Pledge.

It is important that the courts remain as the neutral decision makers in constitutional cases. The Founders wisely enshrined the concept of judicial independence into the Constitution. Federal judges are given lifetime tenure, and Congress is prohibited from reducing their pay during their service in office.

Congress has indeed considered whether to intrude on the province of the Federal courts

throughout the history of this country. Congress wisely rejected President Franklin D. Roosevelt's plan to ''pack the court'' by increasing the size of the Supreme Court. In the 1970s Congress considered, but rejected, effort to strip jurisdiction away from the courts in the areas of civil rights and privacy cases, as a result of Supreme Court decisions of the 1950s and 1960s.

In many ways, this type of legislation is a thinly-veiled attempt to circumvent Article V of the Constitution, which gives Congress the ability to propose an amendment to the Constitution, and therefore overturn a constitutional decision of the Supreme Court. Congress and ultimately the states have the ability to amend the Constitution at their discretion, but under Article III of the Constitution the courts have the obligation to interpret the law and Constitution when ''cases or controversies'' arise in a lawsuit that is properly brought by parties before the court.

This bill would close the door to Federal courts. When there is no court to hear a case, then there is no liberty. A law without a venue for debate is a law without moral force. As the Ranking Member of the Helsinki Commission, I have seen too many countries run by dictators whose first actions are to shut down the independence courts and make them answerable to what the executive and the legislature wanted them to do. We cannot go down this path in the United States, and undermine our citizens' confidence in an independent judiciary that will decide cases without fear or favor.

I urge my colleagues to reject this legislation and attack on the independence of the judiciary, and oppose this legislation.

Mr. UDALL of Colorado. Mr. Chairman, at best this bill is a mistake. At worst, it is a cynical political stunt. Either way, it should not pass.

It seeks to end the ability of Federal courts—including the Supreme Court—''to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, the Pledge of Allegiance'' as the pledge is now worded.

It responds to a 2002 decision of the Court of Appeals for the Ninth Circuit that both the 1954 law that added the words ''under God'' to the pledge and a local school district's policy of daily recitation of the pledge as so worded were unconstitutional. (The ruling later was modified to apply only to the school district's recitation policy.)

The Supreme Court reversed that decision because the plaintiff did not have legal standing to challenge the school district's policy. But the Republican leadership evidently finds the possibility of a similar lawsuit so alarming—or maybe they think it presents such a political opportunity—that they back this bill to keep any Federal court from hearing a lawsuit like that.

I cannot support such legislation.

It mayor may not be constitutional—on that I defer to those with more legal expertise than I can claim. But I have no doubt it is not only unnecessary but even misguided and destructive.

I have no objection to the current wording of the Pledge of Allegiance. After the Ninth Circuit's decision, I voted for a resolution—approved by the House by a vote of 416 to 3—affirming that ''the Pledge of Allegiance and similar expressions are not unconstitutional expressions of religious belief'' and calling for the case to be reheard.

But this bill is a different matter. It may be called the ''Pledge Protection Act,'' but that is inaccurate and even misleading—because it not only fails to protect the pledge but also would undercut the very thing to which those who recite the pledge are expressing their allegiance.

It doesn't protect the pledge because even if it becomes law people who don't like the way the pledge's current wording would still be able to bring lawsuits in state courts. So, even if Colorado's courts upheld the current wording, the courts of other States might not. And the bill says the U.S. Supreme Court could not resolve the matter.

That would mean there would no longer be a single Pledge of Allegiance, but different pledges for different States—and the Constitution's meaning would vary based on State lines. That would directly contradict the very idea of the United States as ''one Nation'' that should remain ''indivisible'' and whose defining characteristics are devotion to ''liberty and justice for all.''

And that would be completely inconsistent with the idea of the Republic (symbolized by the flag) to which we pledge allegiance when we recite what this bill pretends to ''protect.''

How ironic—and how pathetic.

As national legislators, as U.S. Representatives, we can and should do better. We should reject this bill.

Mr. DINGELL. Mr. Chairman, I rise in strong opposition to H.R. 2389. Here we are again considering needless court-stripping legislation that would destroy our constitutional system of checks and balances. This time we wrap it in the flag and call it the Pledge Protection Act.

We dealt with this same legislation two years ago, and it failed to become law. I ask my colleagues, why are we bringing this same legislation up for consideration again 2 years later?

Could it be an election year? Could my colleagues in the majority want to rally a certain part of their base? The real question is whether the majority will put election year political concerns ahead of the good of the Nation? Unfortunately, with this action, it looks like the answer is yes.

This is another extraordinary piece of arrogance on the part of the House of Representatives to pass legislation which would strip American citizens of their right to access the Federal courthouse. Can you imagine anything more shameful than telling an American citizen you cannot go into court to have your concerns addressed, heard by the courts of your Nation?

The right for a citizen to access the courts to decide questions of policy is as old as the Magna Carta, and it is important to us as anything else in the Constitution. Here we calmly say, ''You cannot have access to the Federal courts, including the Supreme Court.'' Shame, shame, shame, shame.

This is a precedent which is going to live to curse us, and we are going to live to regret this day's labor because other precedents will be following this, wherein we strip the rights of citizens under the Second Amendment, the thirteenth, fourteenth, and fifteenth amendments.

The Congress has considered these kinds of questions before. It is to be anticipated if this works, we can look to see this kind of abusive legislation considered in this body again. And you can be certain that somebody is sitting out there now thinking of new rights we can strip because we disagree with them.

I do not believe that we should strip the Federal courts of jurisdiction when it comes to issues related to the Equal Protection Clause of the Constitution. It drastically interferes with the separation of powers between the three branches of our government.

While I will always defend the autonomy and the power of the legislative branch, the principle of judicial review that Chief Justice John Marshall set out in the 1803 decision Marbury v. Madison is law. This landmark case established that the Supreme Court has the right to pass on the constitutionality of an act of Congress. To whittle away one of the bedrock powers of the judicial branch is wrong for the Union and wrong for our citizenry.

Tinkering with the foundation of our judicial branch could come back to haunt us. You can be almost certain with the passage of this legislation that there are interests out there deciding what other rights can be stripped of American citizens because we disagree with them. Maybe a future Congress will want to strip court challenges to gun control legislation by gun owners or sportsmen.

Mr. Chairman, we live in one Nation, under God, with liberty and justice for all. If we pass this bill, we begin to hollow out the true meaning of the pledge, the Constitution and what it means to live in this great Nation.

Like I did 2 years ago, I strongly oppose this legislation and urge my colleagues to do the same.

Mr. HOLT. Mr. Chairman, I rise in opposition to H.R. 2389, which would strip from the federal courts and the Supreme Court the ability to hear any cases related to the Pledge of Allegiance. This bill eliminates the basic principle of judicial review that was established by the Supreme Court in Marbury v. Madison back in 1803.

This bill should not have come to the floor today because it seeks to make a dangerous change to our Nation's system of checks and balances. For that reason, this bill was rejected by the House Judiciary Committee. Yet, the Majority has brought it up today to intentionally divide the House. This is not the first time. We have seen this before. In September two years ago, we had this same vote, and I opposed it then.

The judiciary was designed to be the one branch of the federal government that is insulated from political forces. This independent nature enables the federal judiciary to thoughtfully and objectively review laws to ensure that they are in line with the Constitution. Throughout the development of our Nation, this check has been vital to protecting the rights of minorities.

Although the Constitution gives Congress the power to limit the jurisdiction of the federal judiciary and the appellate jurisdiction of the Supreme Court, I am certain that the founding fathers did not intend for Congress to use this power to shape the jurisdiction of the courts along ideological lines. This legislation will set a dangerous precedent by allowing Congress to avoid judicial review so that it can pass legislation that it thinks may be unconstitutional. This is a clear abuse of Congressional authority and a cynical attempt to question the patriotism of Members of this institution.

Like every Member of this body, I am proud to recite the Pledge of Allegiance as a way to express my loyalty to this Nation and its

founding principles. I make it a point during my town meetings in New Jersey to lead my constituents in reciting the Pledge of Allegiance. I share the view of many Members that the current text of the Pledge of Allegiance is constitutional including the phrase ''under God''. I expressed my support for the Pledge in its current form when I joined many of my colleagues in voting for a resolution that urged the Supreme Court to recognize the constitutional right of children to recite the pledge in school. That resolution was an appropriate way for me, as a Member of Congress, to express my belief in the constitutionality of the Pledge of Allegiance.

Unfortunately, those who support this legislation seek to alter our delicate system of checks and balances and make their own decisions unchallengeable—as if they were infallible. They are attempting to alter the intended framework of our government, which has met the needs of a diverse population and allowed us to remain indivisible in times of crisis for more than 200 years. We should not make this dangerous change to upset the balance of power established by our Founding Fathers and enshrined in the Constitution.

I urge my colleagues to oppose this bill.

Mr. BONNER. Mr. Chairman, I rise today in support of H.R. 2389, ''The Pledge Protection Act.''

As I rise to address this body, I am reminded by the words above the Speaker's chair, ''In God We Trust'' and the significance those words hold for our great Nation. From the unalienable rights that Mr. Jefferson penned in the Declaration of Independence to the money that is minted just blocks from this Chamber, our Nation has and will continue to publicly recognize God's providence and guidance. However, the recognition of God contained within the Pledge of Allegiance has provided leverage for some courts to claim that reciting our Pledge is unconstitutional.

In 1954, this body recognized the need to add the phrase ''under God'' to our Pledge and for 46 years this was hailed by Americans and remained uncontested. Yet in 2002, these two words were exploited by courts claiming that it is unconstitutional for the Pledge of Allegiance to remain a part of American life. Congress acted swiftly to reverse the damage caused by such a ruling and preserve the patriotic act of reciting the Pledge. In 2002, both Houses of Congress overwhelmingly supported resolutions rebuking the court and upholding the Pledge of Allegiance. However, Congress failed to invoke our authority to prevent activist courts from destroying the American institution that is the Pledge of Allegiance.

The Pledge embodies our patriotism and must be preserved. It serves to remind this body, at the beginning of each daily session, of our devotion to country. Protecting the Pledge ensures that the ideals of America will continue for generations to come.

Mr. Chairman, I urge my colleagues to join with me in support of this bill to prevent the federal judiciary from hearing cases against the Pledge of Allegiance.

Mr. SHAYS. Mr. Chairman, today, I urge my colleagues to vote against H.R. 2389, the Pledge Protection Act.

The phrase ''under God'' belongs in our Pledge of Allegiance to the Flag of the United States of America and the words In God We Trust belong on our currency. The Ninth Circuit Court of Appeals made a serious error in Newdow v. U.S. Congress when they declared our Pledge unconstitutional.

When the phrase under God was added to the Pledge of Allegiance in 1954, I was in elementary school and remember feeling the phrase belonged there. It appropriately reflects the fact that a belief in God motivated the founding and development of our great Nation.

The Declaration of Independence states, ''We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights . . .'' Our forefathers understood it was not they, but He, who had bestowed upon all of us those most cherished rights to life, liberty and the pursuit of happiness upon which our model of government is based.

At Gettysburg, President Abraham Lincoln acknowledged we were a Nation under God and, during his Second Inaugural Address, he mentioned our Creator 13 times.

Those historic speeches, the Pledge of Allegiance, our currency and the Declaration of Independence are not prayers or parts of a religious service. They are a statement of our commitment as citizens to our great Nation and the role God plays in it.

Our founders envisioned a government that would allow, not discourage or punish, the free exercise of religion and we are living their dream.

I oppose the Pledge Protection Act because I have faith in our Constitution and do not believe we should preclude judges from hearing issues of social relevance, simply because we may disagree with their ultimate decisions.

While the courts may, from time to time, produce a ruling we question, the principle of judicial review is essential to maintaining the integrity of our system of checks and balances and I fear the path we appear to be on. We are a Nation under God, and in Him we trust.

Mr. CARDOZA. Mr. Chairman, I rise in opposition to H.R. 2389, the Pledge Protection Act.

While I strongly support the Pledge of Allegiance and the use of the term under God, I oppose this misguided legislation because it would strip all federal courts, including the Supreme Court, of the jurisdiction to hear First Amendment challenges to the Pledge of Allegiance.

In the process, this legislation would strip federal courts of their important role in safeguarding Constitutional rights and freedoms. It will also work to undermine public confidence in the federal courts by expressing outright hostility to their role as a neutral arbiter of constitutional claims.

Through passage of this legislation, this body is endorsing the dangerous premise that Congress is above the Constitution. So in response, I ask my colleagues this question: do you believe our founding fathers designed the Constitution to protect the people from their government, or to regulate the conduct of its citizens?

I submit that if we strip federal courts of their judicial independence, nothing stops Congress from preventing courts to rule on other freedoms protected in our Bill of Rights, including freedom of speech, the right to bear arms, freedom of worship and freedom to assemble. Is that really the precedent we want to establish?

I believe we need our judicial system to protect our rights—and this bill prohibits the courts from doing just that. Indeed, I believe enactment of this legislation would have a dramatic impact on the ability of individual Americans to be free from government-coerced speech or religious expression.

In our system of democracy, our government works on a system of checks and balances. Instead of stripping power from the courts, I believe we should follow the process prescribed in our Constitution—consideration of a Constitutional amendment. In fact, as a member of the California Legislature, I passed a bill calling on Congress to pass a Pledge protection amendment, and I believe that is the appropriate way to address this issue.

I happen to believe that the inclusion of the term under God in the Pledge is appropriate and constitutional. Further, should the Supreme Court ever rule that the term is unconstitutional, I would vote for a constitutional amendment to it ensure its presence. I support the Pledge because it is an important part of our American fabric, and an important symbol of the rights our founding fathers fought so desperately to preserve—liberty and justice for every American.

But our justice is protected by our independent judiciary. Let us keep it that way for all Americans. Oppose this bill and support and protect our Constitutional rights.

Mr. BLUMENAUER. Mr. Chairman, I oppose the ''Pledge Protection Act'' because of its potential ramification for the judicial process. This legislation seeks to prohibit all federal courts, including the Supreme Court, from hearing any case that challenges the constitutionality of the Pledge of Allegiance.

This legislation is a response to recent challenges in the 9th Circuit Court involving the statement ''under God.'' While I do not agree with the court's decision, we are heading down a slippery slope when we authorize Congress to use its power over the courts to limit jurisdiction of constitutional challenges.

This seemingly bipartisan legislation is another attack on our principles of civil liberties and equal protection, just as we saw on yesterday's vote on the ''Marriage Protection Act,'' to please the most extreme of the Republican base. It is not worth undermining our system of checks and balances.

Yesterday, the state's domestic laws; today, the Pledge of Allegiance; tomorrow . . .?

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in opposition to H.R. 2389, the Pledge Protection Act of 2005.

This bill precludes any Federal judicial review of any constitutional challenge to recitation of the Pledge of Allegiance—whether it be in the lower Federal courts or in the highest court in the land, the U.S. Supreme Court. Effectively, if passed, this extremely vague legislation will relegate all claimants to State courts to review any challenges to the pledge. This possibility will lead to different constitutional constructions in each of the 50 States.

The only way to make this bill palatable is to adopt the Jackson-Lee amendment, which provides for an exception to the bill's preclusion for cases that involve allegations of coerced or mandatory recitation of the Pledge of Allegiance, including coercion in violation of the First Amendment or the Equal Protection clauses. Opposing the Jackson-Lee amendment is tantamount to endorsing the coercion of children to mandatory recitation of the Pledge of Allegiance.

Closing the doors of the Federal courthouse doors to claimants will actually amount to a

coercion of individuals to recite the pledge and its ''under God'' reference in violation of West Virginia State Board of Education v. Barnette. In Barnette, the Supreme Court struck down a West Virginia law that mandated school children recite the Pledge of Allegiance. Under the West Virginia law, religious minorities faced expulsion from school and could be subject to prosecution and fines, if convicted of violating the statute's provisions. In striking down that statute, Justice Jackson wrote for the Court:

''To believe in patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.''

H.R. 2389 would strip parents of their right to go to court and defend their children's religious liberty. If this legislation is passed, schools could expel children for acting according to the dictates of their faith and Congress will have slammed the courthouse door shut in their faces. When I was a child, I always wondered why, when the rest of the class recited the Pledge of Allegiance, one little girl always sat quietly. Today, I understand that it was because she was of the 7th Day Adventist faith and therefore reciting the ''under God'' provision would force her to undermine her religious faith. If H.R. 2389 were law back then, the school administrators could have forced her to say the pledge and she would have no recourse in the Federal courts.

The problem with this bill is that it does not protect religious minorities, Mr. Chairman.

Article III, Section I of the U.S. Constitution vests ''the Judicial Power of the United States . . . in one supreme court.'' The list of subject matter areas which the Federal courts have the power to hear and decide under section 2 of Article III establishes that, ''The Judicial power shall extend to all cases . . . arising under this Constitution.'' For over 50 years, the Federal courts have played a central role in the interpretation and enforcement of civil rights laws. Bills such as H.R. 2389 and the Federal Marriage Amendment we debated yesterday are bills to prevent the courts from exercising their article III functions and prohibiting discrimination. We cannot allow bad legislation such as this to pass in the House, and thereby eviscerate the Constitution and the values upon which this nation was originally founded. In the 1970s, some Members of Congress unsuccessfully sought to strip the courts of jurisdiction to hear desegregation efforts such as busing, which would have perpetuated racial inequality. We did not allow it then, and we should not allow it now.

H.R. 2389, as drafted, insulates the Pledge of Allegiance as set forth in section 4 of title 4 of the United States Code from constitutional challenge in the Federal court. The Jackson-Lee amendment protects children from being coerced or forced into reciting the Pledge of Allegiance against their will.

However, the statute and the pledge are subject to change by future legislation bodies. This means that if some future Congress decides to insert some religiously offensive or discriminatory language in the Pledge, the matter would be immune to constitutional challenge in the Federal courts.

Mr. Chairman, I ask unanimous consent to place in the RECORD a copy of a letter dated July 18, 2006 from the American Bar Association which supports my claims.

Mr. Chairman, I ask that my colleagues vote to protect religious minorities, vote to protect judicial review, vote to protect separation of powers, and vote to protect access to the Federal courts. I urge my colleagues to vote against H.R. 2389.

Ms. LINDA T. SÁNCHEZ of California. Mr. Chairman, I support our national Pledge of Allegiance 100 percent. I strongly believe the Pledge teaches America's children national pride and a sense of civic responsibility.

However, I oppose H.R. 2389, the ''Pledge Protection Act.'' This bill is merely a reaction to one federal case: Newdow vs. U.S. Congress.

The 9th Circuit Federal court in Newdow held that the Pledge of Allegiance violated the Established Clause of the Constitution. The court ruled that the phrase ''one nation under God'' within the Pledge impermissibly takes a position with respect to the identity and existence of God.

I disagree with the 9th Circuit's ruling in the Newdow case. However, I don't believe the way to protect the Pledge of Allegiance is by banning all federal courts from hearing cases dealing with the Pledge, which is what H.R. 2389 does. H.R. 2389 goes way too far. In fact, it violates the Constitution and the very spirit of the Pledge itself.

The federal courts, not the United States Congress, have the power to interpret and enforce rights protected under the Constitution. That is what the famous Marbury vs. Madison case was all about: separation of powers. But, H.R. 2389 violates the constitutional separation of powers principle, because it strips all federal courts of their power to make rulings on an individual's right to choose whether to recite the Pledge of Allegiance.

To ensure that America remains an indivisible and proud Nation, it is very important that we protect the Pledge of Allegiance, but it is even more important that we do not violate the Constitution and undermine the federal courts to do so.

Therefore, I oppose H.R. 2389.

Mr. TIAHRT. Mr. Chairman, I rise today in strong support of H.R. 2389, The Pledge Protection Act, offered by Representative TODD AKIN.

This legislation protects our Pledge of Allegiance by preventing radical judges and liberal lawyers from questioning the constitutionality of the phrase ''under God.''

The preamble of the Declaration of Independence states: ''We hold these Truths to be self-evident, that all Men are created equal, that they are endowed, by their Creator, with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.''

Our national motto is: ''In God We Trust.''

The opening announcement at the United States Supreme Court is: ''God save the United States and this honorable court.''

Unless there is a law limiting the jurisdiction of Federal courts, we will continue to see lawsuits such as the one that is trying to ban the Pledge of Allegiance in schools because it mentions ''One nation under God.''

The Constitution gives Congress the power to limit the jurisdiction of Federal courts in Article III, Section 2. Maintaining checks and balances on the power of the Judiciary Branch and the other two branches is vital to keep the form of government set up by our Founding Fathers.

I am proud to be a co-sponsor of The Pledge Protection Act and will vote in favor of this legislation.

God Bless America!

Mrs. MALONEY. Mr. Chairman, I rise today in strong opposition to H.R. 2389, the ''Pledge Protection Act.''

This legislation represents an attempt by the Majority to strip the federal courts of jurisdiction over yet another important issue. The effect of H.R. 2389 would be to prevent individuals who have legitimate cases from ever reaching a courtroom. The U.S. Constitution clearly states that a separation of powers, ensured by a system of checks and balances established by our Founding Fathers more than 200 years ago, must exist among the three branches of government. What the proponents of this bill want to do is to tell the courts what cases they can and cannot hear.

This bill is wrong and costs too high a price. I urge my colleagues to vote ''no'' on H.R. 2389.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered read for amendment under the 5-minute rule.

The text of the bill is as follows:

H.R. 2389

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Pledge Protection Act of 2005''.

SEC. 2. LIMITATION ON JURISDICTION.

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following:

''§ 1632. Limitation on jurisdiction

''(a) Except as provided in subsection (b), no court created by Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, the Pledge of Allegiance, as defined in section 4 of title 4, or its recitation.

''(b) The limitation in subsection (a) does not apply to—

''(1) any court established by Congress under its power to make needful rules and regulations respecting the territory of the United States; or

''(2) the Superior Court of the District of Columbia or the District of Columbia Court of Appeals;''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

''1632. Limitation on jurisdiction.''.

The CHAIRMAN. No amendment to the bill shall be in order except those printed in House Report 109–577. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. WATT

The CHAIRMAN. It is now in order to consider amendment No. 1 printed in House Report 109–577.

Mr. WATT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. WATT:

Page 2, lines 12 and 13, strike '', and the Supreme Court shall have no appellate jurisdiction,''.

The CHAIRMAN. Pursuant to House Resolution 920, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. WATT. Mr. Chairman, in many ways my amendment is quite simple. It simply preserves the authority of the United States Supreme Court to do its job. My amendment, however, is fundamental in its simplicity because it reflects the cornerstone of our constitutional framework, a framework that recognizes three coequal branches of government, each with its own area of responsibility, each serving as a check and balance on the others.

For over 200 years, the separation of powers doctrine has worked well, vesting the legislative power with the Congress, the executive power with the President, and the judicial power with the Supreme Court and other inferior Federal courts. At the pinnacle of the judiciary is and has been the one Court mandated by the Constitution, the United States Supreme Court.

I have offered this amendment before, and I offer it today because the very idea of Congress unilaterally cutting off all Federal court review of a constitutional issue is both unprecedented and likely unconstitutional, but it is also impractical and imprudent.

Despite the substantial body of scholarship that suggests that Congress does not have the authority to strip the Supreme Court of this appellate jurisdiction in the manner proposed by this bill, let's for the sake of argument concede that it does have that authority, and let me address the imprudence of this bill.

As legislators exercising the legislative power committed to us by the Constitution, the compelling question is: Why would we want to do what this bill would have us do? What could possibly motivate this Congress to adopt this bill as sound public policy? How does this bill do anything to protect the Pledge of Allegiance? What respect does it show for our venerable institutions? How does it unify us as a Nation?

I suggest to you that this bill makes the Pledge far more vulnerable to assorted, distasteful interpretations than the current law that exists at present.

I appeal to our common sense. Under the bill as drafted, the likelihood that different opinions on the Pledge will issue from State, territorial and the District of Columbia courts is either ignored or deliberately sheltered from challenge. Rather than protect the Pledge of Allegiance, this bill invites a patchwork of interpretations from all over the country.

What if your State is the State that determines that your child can no longer recite the words ''under God'' in the Pledge? Will you move to a neighboring State? Move across the country? Wherever you find a friendly State interpretation? But what if there is no Federal constitutional determination, and State legislatures are left to change the law upon acquiring the appropriate majority. Would you become a nomad? Would you move from State to State in search of the right position for your child?

The bill eliminates every single recourse that you have. It establishes a mechanism under which an individual's Federal rights would depend entirely on the happenstance of location. Ultimately coercing children to recite the Pledge without the language ''under God'' may be prohibited in one place but not another. Constitutional protections could be strong in one State and weak or nonexistent in another.

My amendment would restore the obligation of the Supreme Court to exercise its role as the final arbiter of the Constitution. Even if the proponents of this measure believe the Federal, district, and circuit courts of appeal should be removed from the process, the role of the U.S. Supreme Court in establishing uniform standards to apply to all Americans wherever they reside should certainly be protected.

I urge my colleagues to support my amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman's time has expired.

Mr. AKIN. Mr. Chairman, I rise to claim the time in opposition to the amendment, and I yield 2 minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chairman, I thank the gentleman for yielding this time and for his leadership on this issue.

This issue that is in front of us today is an example of congressional restraint, congressional restraint with regard to a court that is out of control.

The Ninth Circuit Court has thrown it back at this Congress time and time again, and the activism that has taken place out there in the ninth circuit brings me to some things that would be more drastic solutions to this than this very careful, very narrow, very gently defined legislation that we have before us. It only deals with the words ''under God'' in the Pledge.

We could do far more. In fact, I voted to split the ninth circuit in half. I would vote to abolish them if they continue this kind of behavior, throwing this into the face of the American people. We are not doing that. We are very carefully, very narrowly addressing something that the American people are asking for, very well within the jurisdiction of the United States Congress. And any Member who votes against this legislation may have their opinions, as Mr. WATT does, that they are either knowingly or inadvertently or perhaps even willfully conceding some power and authority this Congress has to control the courts.

In the end, it is the Congress that controls the courts. It is not three separate but equal branches. In the end, the congressional structure is set up for the Congress to determine the final authority over the judicial branch of government through the pursestrings. For all of our judicial courts and all of our appellate courts, everything is a creature of Congress, except the Supreme Court, which is also a creature of Congress, but established by the directive and the mandate of the Constitution.

Mr. Chairman, we have the authority to do this. It is a very narrowly and carefully defined piece of legislation.

The Watt amendment is a gutting amendment. It kills the bill. It hands this authority over to the Supreme Court, which is our very number one concern. We simply want to, with legislation, reflect the values of the American people, reflect the values of the history and the legacy of our Founding Fathers, and our rights that come from God within this Pledge. I urge we oppose the Watt amendment.

Mr. AKIN. Mr. Chairman, I yield myself the balance of my time.

Essentially what our bill does, if you want to put it in a simple word picture, we are creating a fence. The fence goes around the Federal judiciary. We do that because we don't trust them. We don't trust them because of previous decisions and because of the simple fact that there are not five votes on the Supreme Court to protect our beloved Pledge of Allegiance. And 80 percent to 90 percent of Americans would like to leave the Pledge of Allegiance the way it is.

So what does this amendment do? This amendment simply opens a big hole in the fence. So the gentleman from Iowa was absolutely right: this is a gutting amendment. There is absolutely no reason to pass the bill if this amendment were to pass. We simply allow the Supreme Court to come in whenever they choose, turn the first amendment upside down and simply say to kids, you are not allowed to say the Pledge of Allegiance, and we are going to use the first amendment from now on as a weapon instead of for free speech to censorship on the courts.

So I am not persuaded by the pious hand-wringing of liberal activists who flinch not at the courts' unfettered march to create some imagined utopia at the expense of the separation of powers. It is time for us to do our job as Congressmen. It is time to assert ourselves, that we will not give unchecked legislative authority to the courts. We have been too long rolling

over to them. It is time to stand up and say on the Pledge of Allegiance, enough is enough.

Mrs. BIGGERT. Mr. Chairman, I rise today in support of the Watt Amendment, which would restore the Supreme Court's jurisdiction over questions related to the Pledge of Allegiance.

The Pledge of Allegiance is an important expression of our shared values, and it should be preserved in its current form. I fully support the Pledge of Allegiance and urge my colleagues to do the same.

The intent of this bill is good. In fact, I was a cosponsor of this bill in the 108th Congress. However, that was before the provision was added to restrict the Supreme Court from hearing cases involving the Pledge of Allegiance. The bill we vote on today again strips the Supreme Court's jurisdiction over this important constitutional issue.

I recognize that Congress clearly has the authority under Article III of the Constitution to define the jurisdiction or the federal district and appellate courts. But constitutional scholars say there is no direct precedent for making exceptions to the appellate jurisdiction of the Supreme Court.

I would caution my colleagues to think twice before tampering with authorities clearly granted in the Constitution. The issue today may be the Pledge, but what if the issue tomorrow is Second Amendment rights, civil rights, environmental protection, or a host of other issues that members may hold dear?

I would also ask my colleagues, do we really want 50 different versions of the Pledge of Allegiance? I certainly don't think so.

The Watt amendment would restore to the bill the Supreme Court's jurisdiction over questions related to the Pledge of Allegiance, changing the bill back to the way it was originally introduced in the 108th Congress when I was a cosponsor.

I revere the Constitution and the Pledge of Allegiance. I believe that ''Under God'' are two of the most important words in the Pledge. I also believe that the Supreme Court should be the final arbiter of all federal questions. That's why I urge you to support the Watt Amendment to the Pledge Protection Act.

Mr AKIN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina (Mr. WATT).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. WATT. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from North Carolina will be postponed.

The point of no quorum is considered withdrawn.

AMENDMENT NO. 2 OFFERED BY MS. JACKSON-LEE OF TEXAS

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 109–577.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Ms. JACKSON-LEE of Texas:

Page 3, line 2, insert after ''recitation'' the following: '', except in a case in which the claim involved alleges coerced or mandatory recitation of the Pledge of Allegiance, including coercion in violation of the protection of the free exercise of religion''.

The CHAIRMAN. Pursuant to House Resolution 920, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I would imagine that Members across the campus in their offices and maybe even committee rooms are moved by the impassioned pleas by my friends on the other side of the aisle, so I want to make a pledge, and that is that I have stood on the floor of the House and acknowledged the importance of having our schoolchildren and others of America acknowledge and say the Pledge of Allegiance every single day. I stand by that statement.

What bothers me is when Members come to the floor and vote, they will look to the name of the proponent and they will simply vote ''no.'' They will not understand the crux of the debate. They will not understand the sheer quarrel or the sheer amazement that we have with this particular legislation in the first place.

This legislation deals with the idea of protecting the Pledge of Allegiance by denying access to the courthouse. My amendment is simple. It gives real meaning to the Pledge of Allegiance and the patriotism that is felt when it is recited by making it clear that no one can be forced or coerced to recite the Pledge of Allegiance or retaliated against for not reciting it in those cases where doing so violates one's religious beliefs.

What is the hindrance of Members agreeing to allow one to be able to access the courts on the simple ground that it violates one's religious beliefs?

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In this way, my amendment ensures that the Pledge of Allegiance is being recited freely, voluntarily and without coercion or fear of retaliation. In this way, a recited Pledge of Allegiance remains sacrosanct, and our national commitment to religious freedom is preserved.

Might I cite for my friends a quote from President Reagan, the great communicator himself, who said in 1983, ''The first amendment of the Constitution was not written to protect the people of this country from religious values, it was written to protect religious values from government tyranny.''

What I would suggest is to close the courthouse door is an example of government tyranny. It means that if my 6-year-old friend by the name of Hazel, who had a religious belief, whose family had a religious belief, who was allowed to sit silently in her seat when all of us stood to say I pledge allegiance, that little girl, if forced by any school system to do so, now has the courthouse door closed to her.

It means that we are ignoring the West Virginia State Board of Education versus Barnett case that mandated that school children recite the Pledge of Allegiance. This was done in West Virginia. Under West Virginia law, persons who on religious grounds refused to recite the Pledge faced expulsion from school. But Justice Jackson wrote, ''To believe patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institution to free minds.''

Mr. Chairman, I have said it is good and good news to say the Pledge and to have our school children say the Pledge. This amendment is very clear. It does nothing to this particular legislation, other than to say that if your grounds are religious based, based on religion, based on your defined religious beliefs, why are you denying them the right to go into the courthouse on religious beliefs only?

That is the question that clergy are asking across America. That is the question that the American Bar Association, representing lawyers of all political persuasions, are asking at this time.

And I beg of my colleagues to understand that we are protectors of liberty. We are protectors of the first amendment. We are not to denounce the first amendment. We are not to ignoring the first amendment. We are not to stomp on the first amendment. And I would beg to say that if we call ourselves protecting the flag, the very flag that soldiers in Iraq and Afghanistan are now on the battlefield shedding their blood, veterans, and we would deny Americans the right to utilize the constitutional branch of government created by the Constitution and created by this body.

Shame on us if we cannot accept the entreaty of a little girl named Hazel, who sat next to me in a school a few short years ago, I might add, lonely, unprotected, fearful, sitting isolated while we stood to say the Pledge. I am grateful that I had a teacher that understood that we would not stigmatize her, discriminate against her, and she had her freedom.

This is an important amendment to ensure that all of our freedom is protected. I ask my colleagues for a vote for religious freedom and liberty and to allow the Jackson-Lee amendment to go forward.

Mr. Chairman, I have an amendment at the desk. I thank the members of the Rules Committee for allowing this amendment to go forward.

Mr. Chairman, my amendment gives real meaning to the Pledge of Allegiance and the

patriotism that is felt when it is recited by making it clear that no one can be coerced or forced to recite the Pledge, or retaliated against for not reciting it in those cases where doing so violates one's religious beliefs. In this way, my amendment ensures that the Pledge of Allegiance is being recited freely, voluntarily, and without coercion or fear of retaliation. In this way, a recited Pledge of Allegiance remains sacrosanct and our national commitment to religious freedom is preserved.

Mr. Chairman, my amendment draws inspiration from President Reagan, the Great Communicator himself, who said in 1983:

The First Amendment of the Constitution was not written to protect the people of this country from religious values; it was written to protect religious values from government tyranny.

H.R. 2389 precludes Federal judicial review of any constitutional challenge to recitation of the Pledge of Allegiance—whether it be in the lower Federal courts or the U.S. Supreme Court. My amendment does not disturb this legislative judgment except in the limited instance of cases involving claims of coercion and mandatory recitation. In other words, my amendment is intended to protect religious values from government tyranny. Nothing less, nothing more.

Mr. Chairman, in West Virginia State Board of Education v. Barnett, the Supreme Court struck down a West Virginia law that mandated schoolchildren recite the Pledge of Allegiance. Under West Virginia law, persons who, on religious grounds, refused to recite the Pledge faced expulsion from school and could be prosecuted and fined for violating the statute. In striking down that statute, the great Justice Robert Jackson wrote for the Court:

To believe patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

Mr. Chairman, my amendment is important for another reason. H.R. 2389, as drafted, insulates the Pledge of Allegiance from constitutional challenge in Federal court.

However, the pledge itself is subject to change by future legislative bodies. This means that if some future Congress decides to revise the Pledge to include religiously offensive or discriminatory language in the Pledge, the authority of the government to compel a person to recite that Pledge could not be challenged in Federal court. None of us would want that to happen. My amendment ensures that it won't.

Mr. Chairman, my amendment protects religious minorities. My amendment protects judicial review. My amendment protects the separation of powers. My amendment strengthens the Pledge by ensuring that it recited voluntarily. My amendment ensures that the Pledge, like the oath all Members of Congress take, is ''given freely, without mental reservation or purpose of evasion.'' I urge all Members to support the Jackson-Lee amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentlewoman's time has expired.

Mr. AKIN. Mr. Chairman, I rise to claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. AKIN. Mr. Chairman, I yield 3 minutes to my distinguished colleague from Arizona, TRENT FRANKS.

Mr. FRANKS of Arizona. Mr. Chairman, may I first remind all of us of words we each spoke not so long ago.

''I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.''

Mr. Chairman, when we swore this oath, we did not say that we would protect the Constitution from everyone except rogue judges.

The issue that brings us to the floor this day is an act on the part of the Ninth Circuit that ruled that the words ''under God'' in a voluntary Pledge of Allegiance by our school children is unconstitutional.

It astonishes me, Mr. Chairman, that we even have to address such an insane conclusion. I truly believe that if we had lived in the days of the Founding Fathers and accused them of intending to outlaw school children from saying the words ''under God'' in their voluntary Pledge of Allegiance, they would have challenged us to a duel for impugning their honor in such an egregious and outrageous fashion.

Mr. Chairman, when judicial supremacists on the bench desecrate the very Constitution that they are given charge, the sacred charge to defend, those of us in this Congress who have also made an oath to defend the Constitution must respond accordingly.

The Constitution of the United States, Mr. Chairman, does not prohibit school children from saying the words ''under God'' in a voluntary Pledge of Allegiance. It is that fundamentally simple.

Indeed, the Constitution does say that the Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Mr. Chairman, when the Ninth Circuit decision said school children cannot voluntarily say the words ''under God'' in their Pledge of Allegiance, these judges, sir, were prohibiting the free exercise thereof.

This legislation would take such a decision away from such rogue judges.

Mr. Chairman, if Congress forsakes their oath and their duty to defend the Constitution and allows this magnificent document to fall prey to activist judges, we relegate this Republic to an arrogant judicial oligarchy. It is an abrogation of our oath of office and it tramples on the blood of our Founding Fathers and the soldiers who died to give us America and her rule of law.

There would be nothing left to us at that point but to board up the windows in this building and go home and quit pretending to be defenders of the United States Constitution or representatives of the greatest Republic in the history of humanity.

Mr. Chairman, it is not too late. I urge this amendment be rejected, and the bill be passed as written.

Mr. AKIN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Chairman announced that the noes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Texas will be postponed.

Ms. JACKSON-LEE of Texas. Mr. Chairman, in the spirit of reflection of this disastrous bill, I ask unanimous consent to withdraw my rollcall vote only because I believe that we would denigrate the protection of religion even further by subjecting my very good amendment to a rollcall vote. It should be already included in this.

The CHAIRMAN. Without objection, the gentlewoman's request for a recorded vote is withdrawn, to the end that the amendment stands rejected by voice vote.

There was no objection.

So the amendment was rejected.

AMENDMENT NO. 3 OFFERED BY MR. AKIN

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 109–577.

Mr. AKIN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. AKIN:

Add at the end the following:

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on the date of the enactment of this Act and apply to any case that—

(1) is pending on such date of enactment; or

(2) is commenced on or after such date of enactment.

The CHAIRMAN. Pursuant to House Resolution 920, the gentleman from Missouri (Mr. AKIN) and a Member opposed each will control 5 minutes.

Mr. NADLER. Mr. Chairman, I claim the time in opposition.

The CHAIRMAN. The gentleman from New York will control the 5 minutes in opposition.

The Chair recognizes the gentleman from Missouri.

Mr. AKIN. Mr. Chairman, could I just ask, is the other side going to be speaking on the amendment?

The CHAIRMAN. Mr. NADLER has claimed the 5 minutes in opposition, so I assume he is going to speak.

Mr. AKIN. That is a good assumption.

Mr. Chairman, the purpose of this amendment and the reason it was added, to some degree in a last-minute nature, was because of the Hamden decision. The Hamden decision, a majority of the Supreme Court on an Article III, section 2 question said that because a particular issue, in this case it was Gitmo, was being considered in the courts, that the article III, section 2 language didn't apply.

Now, this is completely inconsistent with all previous rulings of the Supreme Court. But we thought, just to be safe, that what we would do here would be to add language that makes it clear that not only does this bill consider any future cases that are brought before the court, the Federal courts, but also existing cases, in this case, again, the challenge to the Pledge that is already in the Federal court system and is before the Ninth Circuit out in California and some of the States in the West. So that was the reason for this technical and perfecting amendment, certainly to clarify, just simply to clarify that this bill would apply not only to future legislation but cases that are currently before the Court.

Along those lines, I think it is very important for us to once again affirm the importance of our discussion and our debate here today. It is ultimately the job of the legislative branch and the executive branch to provide some check and balance on the Supreme Court.

There would be no argument from me if the Supreme Court based all of their decisions on the rules, that is the U.S. Constitution. However, the Supreme Court has gone beyond that increasingly, and it is our concern that they will go well beyond the U.S. Constitution in considering this case.

We have every reason to believe that we do not have five Justices that will support the Pledge. We have every reason to believe that the Pledge could easily be struck, and it is for that reason that this bill has been introduced.

Now, some would say that, in fact I believe the minority leader called what is going on on this floor a charade. I think that is a rather harsh way of describing people that have a genuine interest in the Pledge of Allegiance, have a genuine interest in the heart of what this good Nation was based on, the idea that there is, in fact, a God that grants basic inalienable rights to all people, and that the job of government is to protect those basic rights.

Part of that U.S. Constitution includes the first amendment, and the first amendment has to do with free speech. I can understand the use of the first amendment to say to someone, you are not required to give an oath that you don't believe in. But I cannot understand how you can look at free speech as a tool to censor school children across America from saying that they cannot, they are going to censor the Pledge of Allegiance, they cannot say the Pledge of Allegiance.

This is the time for this Congress to stand up, to be strong, and to take notice of the fact that the Court will no longer be making these forays of absolutely unchecked legislative decisionmaking. And it is time for us to stand up and say no to a Court that is effectively trying to create their own set of rules instead of reading the U.S. Constitution.

Mr. Chairman, I think that there is good evidence from the way that the Court has handled the fifth amendment in allowing the redistribution of private property willy nilly, without a government purpose, I think there is good reason to be concerned as the Court has taken to itself a power to tax, which is unconstitutional. There is good reason for us to be concerned about the Court's overrunning their constitutional bounds.

It is time for us to show the backbone to stand up to the Court. It is time for us to say no to this unregulated, general legislative authority.

Mr. Chairman, I yield back the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are now down to the heart of the matter. This entire spectacle is aimed at a possible decision by one Court that the directed recitation by school children under the instruction of their teacher of the phrase ''under God'' may violate the first amendment rights of those children.

Let's be clear. Nowhere in the United States is the use of the phrase ''under God'' prohibited in the public schools. In the only two cases in which the Court ruled that the directed recitation of the phrase ''under God'' violated the establishment clause, the Supreme Court vacated one ruling, and has issued a stay preventing the second ruling from interfering with the recitation of the Pledge.

For this we need to take a chain saw to the Constitution? For this we need to endanger the religious liberty of religious minorities like the Jehovah's Witnesses, who were thrown out of school because their religion barred them from saying the Pledge?

Only the Supreme Court protected their rights in violence against Jehovah's Witnesses that ensued.

This bill would not only prevent the Supreme Court from ruling on the constitutionality of directing school children to recite the phrase ''under God,'' it would also overturn the 1943 Supreme Court Jehovah's Witnesses case and allow the punishment or expulsion of school children for refusing to recite a pledge that violates their religion or their conscience.

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We may be endowed, Mr. Chairman, by our Creator with certain unalienable rights, but people can, and routinely do, violate and take away those rights. That is why we need a Supreme Court, to protect these rights even when political majorities will not.

Supporters of this bill have candidly said they disagree with the Supreme Court, and that, in their opinion, the Supreme Court has gone beyond its powers, and that we, in effect, should overrule it and prevent them from ruling in these cases. We have heard this before. Look at the notorious ''Southern Manifesto'' against the Supreme Court decision in the Brown v. Board of Education 50 years ago: ''We regard the decisions of the Supreme Court in the school cases as a clear abuse of judicial power. It climaxes a trend in the Federal judiciary undertaking to legislate, in derogation of the authority of Congress, and to encroach upon the reserved rights of the States and the people.''

That is what we hear whenever people disagree with the Supreme Court, in the school desegregation cases and now. And this amendment makes the point of the bill explicit.

The sponsors are afraid of what the Supreme Court may do in a pending case on this subject that may come before them and therefore explicitly strip the Federal courts of jurisdiction even over a pending case. This is Congress saying to a specific plaintiff, we do not approve of your claim of a violation of your constitutional right; so we are going to shut the courthouse door in your face.

This is a dangerous enterprise. I respect my friend's concerns and his right to disagree with the courts, but we must not destroy our Constitution and the one independent bulwark of our liberty. I urge defeat of this bill.

Mr. Chairman, I yield for the purpose of making a unanimous consent request to the distinguished ranking member of the Judiciary Committee, Mr. CONYERS.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I rise today to oppose this amendment and am against any amendment that would throw out any case currently pending in the Court.

This amendment would add language making it explicit that this already unconstitutional bill is effective immediately and applies to all pending and future litigation. As it currently stands, this bill does nothing to protect religious minorities from being coerced into reciting the Pledge, in violation of their First Amendment right of free speech. This amendment would effectively throw out any case that is currently pending in court in which a child's right to be free from religious persecution is being vindicated, and would slam the courthouse door shut in their faces.

H.R. 2389 as a whole is premature and should not be on our list of priorities.

What I find particularly troubling about this bill, setting aside all of the concerns that I have already stated, is its timing. It seems that my colleagues in the majority have lost sight of our priorities. At a time of record budget deficits and gasoline prices, when we are engaged in a quagmire in Iraq, when more than 45 million people are uninsured in this nation, and every day workers are seeing their pensions and health care benefits jeopardized,

surely we can find better things to do with our time as a congress than bash the courts.

Why then is something as arbitrary as a bill that would strip our Federal courts of their authority to hear an issue that the highest court in our land has never spoke on at the top of our list of "things to do"? Need I remind my colleagues that the Supreme Court has never, since the inclusion of the words "under God" into the Pledge of Allegiance back in 1954, discussed or ruled on its constitutionality? Why then do we need this legislation at all? Why then do we need to offer this legislation now? It is our rights as individuals that are at stake right now—not the sanctity and preservation of the Pledge.

I urge my colleagues to vote "no" on this amendment.

Mr. NADLER. Mr. Chairman, how much time do I have left?

The CHAIRMAN. The gentleman from New York has 1½ minutes.

Mr. NADLER. Mr. Chairman, I will not use the 1½ minutes. I will simply say that this amendment is dangerous for the same reason that the bill is dangerous. We should not say, in the case of this amendment, to someone who is a plaintiff in a court in a pending case, we are going to shut the courthouse door in your face because we are afraid the Supreme Court might issue a decision. It has not done it yet, but we are afraid the Supreme Court might issue a decision that we disagree with. We do not trust the courts. We do not agree with them. Never mind that George Bush has appointed two new members of the Court. We still do not agree with it, and, therefore, we are going to try to strip them of their jurisdiction.

That way strips the protection of our liberties from us. We need the courts to protect our liberties. Our constitutional rights can only be vindicated by the courts stepping in when the political branches of government violate the rights of unpopular minorities. That is what the courts have done throughout our history, and we need that protection to continue. And that is why this bill is not only subversive of our constitutional rights, but unconstitutional.

The bill ought to be defeated. The amendment ought to be defeated.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. AKIN).

The amendment was agreed to.

Mr. AKIN. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. MARCHANT) having assumed the chair, Mr. LATOURETTE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2389) to amend title 28, United States Code, with respect to the jurisdiction of Federal courts over certain cases and controversies involving the Pledge of Allegiance, had come to no resolution thereon.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3044

Mr. CONYERS. Mr. Speaker, I ask unanimous consent to remove my name from cosponsorship of H.R. 3044.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

RECORD votes on postponed questions will be taken later today.

COMMENDING NASA ON COMPLETION OF THE SPACE SHUTTLE'S SECOND RETURN-TO-FLIGHT MISSION

Mr. CALVERT. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 448) commending the National Aeronautics and Space Administration on the completion of the Space Shuttle's second Return-to-Flight mission.

The Clerk read as follows:

H. CON. RES. 448

Whereas, on July 4, 2006, the National Aeronautics and Space Administration performed a successful launch of the Space Shuttle Discovery;

Whereas this mission, known as STS–121, marks the second Return-to-Flight mission;

Whereas the crew of the Discovery consisted of Colonel Steve Lindsey, Commander Mark Kelly, Piers Sellers, Ph.D, Lieutenant Colonel Mike Fossum, Commander Lisa Nowak, Stephanie Wilson, and Thomas Reiter;

Whereas the STS–121 mission tested Space Shuttle safety improvements, building on findings from Discovery's flight last year, including a redesign of the Space Shuttle's External Tank foam insulation, in-flight inspection of the shuttle's heat shield, and improved imagery during launch;

Whereas the STS–121 mission re-supplied the International Space Station by delivering more than 28,000 pounds of equipment and supplies, as well as added a third crew member to the International Space Station;

Whereas, due to the overall success of the launch and on-orbit operations, the mission was able to be extended from 12 to 13 days, allowing for an additional space walk to the two originally scheduled;

Whereas the success of the STS–121 mission is a tribute to the skills and dedication of the Space Shuttle crew, the National Aeronautics and Space Administration, and its industrial partners;

Whereas all Americans benefit from the technological advances gained through the Space Shuttle program; and

Whereas the National Aeronautics and Space Administration plays a vital role in sustaining America's preeminence in space: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that the National Aeronautics and Space Administration be commended for—

(1) the successful completion of the Space Shuttle Discovery's STS–121 mission; and

(2) its pioneering work in space exploration which is strengthening the Nation and benefitting all Americans.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. CALVERT) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. CALVERT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on H. Con. Res. 448, the concurrent resolution now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. CALVERT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today I rise in hearty support of H. Con. Res. 448, which commends the National Aeronautics and Space Administration for its successful completion of the space shuttle's second return-to-flight test mission. NASA gave the United States a birthday present and the best fireworks show imaginable with the breathtaking launch of the Discovery mission, also known as STS–121, on the Fourth of July this year.

The shuttle *Discovery* spent nearly 13 days in orbit, 9 of which were spent docked to the international space station. During the 18th shuttle mission to the international space station, the STS–121 crew members delivered over 28,000 pounds of equipment and supplies and transported one additional crew member to the station for a 6-month stay. The astronauts also performed three successful space walks to test equipment and to conduct maintenance.

This Discovery mission is an essential building block for the Vision for Space Exploration to the Moon, Mars, and Beyond. NASA is already fast at work on preparation for the next shuttle launch, with a window that begins on August 28, just a little more than a month away. This mission will resume the assembly of the international space station with the delivery of two truss sections and a set of solar arrays.

NASA Administrator Mike Griffin, the Discovery crew, and the men and women of NASA deserve accolades from the American public for a successful STS–121 mission and for effectively reviving America's space program to the heights of its glory. These astronauts represent the best of humankind. As the President stated upon the return of the Discovery crew on Monday: ''Your courage and commitment to excellence have inspired us all, and a proud Nation sends its congratulations on a job well done. America's space program is a source of great national pride.''